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ABSTRACT

This document presents the New Mexico State Plan for compliance with Part B of the Individuals with Disabilities Education Act (IDEA) for the fiscal years 1995 through 1997. Part 1 presents submission statements and certification information. Part 2 then focuses on policy and procedure addressing compliance in the following areas: (1) the right to education policy statement; (2) the full educational opportunity goal; (3) child identification procedures; (4) individualized education programs; (5) procedural safeguards; (6) confidentiality of information; (7) least restrictive environment requirements; (8) protection in evaluation procedures; (9) comprehensive personnel development; (10) participation of children enrolled in private schools not placed or referred by public agencies; (11) placement in private schools; (12) recovery of funds for misclassified children; (13) hearings on public education agency applications; (14) annual evaluations; (15) additional requirements; (16) interagency agreements; (17) personnel standards; and (18) use of IDEA Part B funds. Part 3 specifically addresses application for preschool grants. Appendices comprise the bulk of the document and include texts of relevant state legislation, New Mexico's special education standards for excellence, guidelines for grant application, an agency evaluation checklist, a child count data report, due process procedures, an interagency agreement, and guidelines for professional development. (DB)

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NEW MEXICO STATE PLAN
UNDER PART B OF THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT

FISCAL YEARS
1995
1996
1997

PROPOSED BY
THE NEW MEXICO STATE DEPARTMENT OF EDUCATION
FOR APPROVAL BY THE NEW MEXICO STATE BOARD OF EDUCATION
1994

FOR SUBMISSION TO THE UNITED STATES DEPARTMENT OF EDUCATION
March 1, 1994

EC 303475

The New Mexico State Department of Education Vision Statement: "The New Mexico State Department of Education believes the education of all students must become the mission for all New Mexicans. We believe education must challenge all students to reach their potential."

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PART I
SUBMISSION STATEMENTS AND CERTIFICATION

A. SUBMISSION STATEMENT

I, the undersigned authorized official of the State Educational Agency of the State of New Mexico, hereby submit the following State Plan under Part B of the Individuals with Disabilities Education Act (IDEA), which includes the Preschool Grants Application under section 619 of IDEA for Fiscal Years 1995-1997 which includes the grant periods beginning July 1, 1994, July 1, 1995 and July 1, 1996. Unless otherwise noted, the policies and procedures and the certifications and assurances that are used throughout this submission, including references to Part B and to the State Plan also apply to the Preschool Grants Application.

ALAN D. MORGAN State Superintendent of Public Instruction	Date

B. ASSURANCE STATEMENTS

The State of New Mexico makes the following assurances and provisions as required by Part B of the Individuals With Disabilities Education Act, Part B (20 U.S.C. 1411-1420):

1. In carrying out the requirements of 20 U.S.C. 1412, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities (20 U.S.C. 1412(7)(A)).

2. Programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including subpart 2 of part D of Chapter I of Title I of the Elementary and Secondary Education Act of 1965 under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs (20 U.S.C. 1413(a)(2)).

3. Federal funds made available under the Individuals With Disabilities Education Act, Part B: (a) will not be commingled with State funds; and (b) will be so used as to supplement and increase the level of Federal, State and local funds (including funds that are not under control of State or local educational agencies) expended for special education and related services provided to children with disabilities and in no case to supplant such Federal, State and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive in part the requirement of this clause if the Secretary concurs with evidence provided by the State (20 U.S.C. 1413(a)(9)(B) and 20 U.S.C. 1414 (a)(2)(B) (ii)).

4. New Mexico has an advisory panel appointed by the State Superintendent of Public Instruction, authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities, teachers, parents or guardians of children with disabilities, State and local education officials and administrators of programs for children with disabilities, which: (a) Advises the State education agency of unmet needs within the State in the education of children with disabilities; (b) Comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under the Individuals with Disabilities Education

Act; and (c) Assists the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his (her) responsibilities under 20 U.S.C.1418 (20 U.S.C. 1413(a)(12)).

5. The Individuals With Disabilities Education Act, as amended, will not be construed by the State to permit the State to reduce medical or other assistance available under, or to alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State (20 U.S.C. 1413(e)).

6. The New Mexico State Department of Education has policies and procedures to ensure that any amendment to the plan submitted by the State shall be available to parents, guardians and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary (20 U.S.C. 1412 (2)(E)).

7. Control of funds provided and title to property derived therefrom, shall be in a public agency for uses and purposes provided and a public agency will administer such funds and property; and fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the State, including any such funds paid by the State to local educational agencies and intermediate educational units (20 U.S.C. 1413 (a)(6) and (10)).

8. New Mexico will make such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part (20 U.S.C. 1413 (a)(7)).

C. GENERAL STATE PLAN AND PRESCHOOL APPLICATION - EDGAR ASSURANCE

The New Mexico State Department of Education will comply with the provisions contained in 34 CFR 76.101 and section 435 of the General Education Provisions Act.

D. CERTIFICATIONS REQUIRED BY EDGAR

In accordance with 34 CFR 76.104 the New Mexico State Department of Education assures that:

1. The State Plan is submitted by the New Mexico State Department of Education which is eligible to submit the State Plan.

2. The New Mexico State Department of Education has authority under New Mexico State Statutes to perform the functions of the State under the State Plan.

3. The New Mexico State Department of Education legally may carry out each provision of the State Plan.

4. All provisions of the State Plan are consistent with New Mexico State Statutes.

5. The New Mexico State Superintendent of Public Instruction for the New Mexico State Board of Education has authority under New Mexico State Statute to receive, hold and disburse Federal funds made available under the State Plan.

6. The New Mexico State Superintendent of Public Instruction for the New Mexico State Board of Education has authority to submit the State Plan.

7. The New Mexico State Board of Education has adopted or otherwise formally approved the State Plan.

8. The State Plan is the basis for the New Mexico State Department of Education operation and administration of the program.

E. EXECUTIVE ORDER 12372

The New Mexico State Department of Education certifies that:

To the best of our knowledge and belief, data in this State Plan are true and correct, the document has been duly authorized by the New Mexico State Board of Education and the State will comply with the attached assurances if the State Plan is approved.

The State Plan was submitted to the State's "single point of contact" under Executive Order 12372 on January 7, 1994.

F. CIVIL RIGHTS CERTIFICATE

ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 AND THE AGE DISCRIMINATION ACT OF 1975

The NMSDE provides this assurance in consideration of and for the purpose of obtaining Federal grants, loans, contracts (except contracts of insurance or guaranty), property, discounts or other Federal financial assistance in education programs or activities from the Department of Education. The NMSDE assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, As Amended, 42 U.S.C. 2000d et. seq., which prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal financial assistance.

2. Section 504 of the Rehabilitation Act of 1973, As Amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

3. Title IX of the Education Amendments of 1972, As Amended, 20 U.S.C. 1681 et. seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance.

4. The Age Discrimination Act of 1975, As Amended, 42 U.S.C. 6101 et. seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

5. All regulations, guidelines and standards lawfully adopted under the above statutes by the United States Department of Education.

The person or persons whose signature(s) appear(s) below is/are authorized to commit the applicant to the above provisions.

Date:_________________ __________________________________

ALAN D. MORGAN
State Superintendent of Public Instruction
New Mexico State Department of Education
State Education Building
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

PART II

SUBSTANTIVE REQUIREMENTS
POLICY AND PROCEDURE

I. RIGHT TO EDUCATION POLICY STATEMENT

The following information is provided to demonstrate that the NMSDE policy insures a right to a free appropriate public education for all children with disabilities, ages 3-21 (34 CFR 300.121).

A. The NMSDE in its policies and standards assures that every child with a disability, ages 3-21, has available a free appropriate public education. For the purpose of this plan, free appropriate public education (FAPE) means: special education and related services which (a) are provided at public expense, under public supervision and without charge to parents; (b) meet the standards of the New Mexico State Board of Education; (c) include preschool, elementary or secondary school education in New Mexico; d) are provided in conformity with an individualized education program. The New Mexico Constitution, Article XII, Section I states "a uniform system of free public school sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained". The parts of this plan which follow describe the statutes, policies and procedures used in New Mexico to assure the implementation of a free appropriate public education.

B. Responsibility for Education - Section 22-13-5, NMSA 1978, Special education for exceptional* children: "School districts shall provide special education appropriate to meet the needs of all exceptional children unless otherwise provided by law. Regulations and standards shall be developed and established by the state board for the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The state board shall monitor and enforce the regulations and standards. School districts shall also provide services for three-year-old and four-year-old developmentally disabled children unless the parent or guardian chooses not to enroll his child. These services may include evaluating and diagnosing particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing speech, physical or occupational therapy and providing parent education. The services may be provided by school personnel or contracted for with other community agencies and may be either home-based or center-based."

*As used in New Mexico Statutes, the term "exceptional" includes the disabilities identified in 34 CFR 300.7 of the Regulations for the Individuals with Disabilities Education Act, Part B.

C. Right to Education - Section 22-12-4, NMSA 1978, specifically states: "All school age persons in the state shall have a right to a free public education as follows: (A) except for school age persons who are detained or enrolled in state institutions other than those school age persons provided for in Subsection C of this section, any school age person shall have a right to attend public school within the school district in which he resides or is present; (B) except as provided in Subsection C of this section, the state institution in which a school age person is detained or enrolled shall be responsible for providing educational services for the school age person; and (C) any school age person who is a client as defined in Section 43-1-3, NMSA 1978 in a state institution under the authority of the secretary of the health and environment department shall have a right to attend public school in the school district in which the institution in which he is a client is located if: (1) the school age person has been recommended for placement in a public school by the educational appraisal review committee of the district in which the institution is located; or (2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education regulations of the state board of education."

D. The Health and Environment Department Client Education Act further defines the education of School Age Residents - Section 24-3B-3, NMSA 1978: " (1) All school age residents shall be evaluated by the department for purposes of educational placement according to the special education regulations of the state board of education. (2) Any evaluated school age resident not recommended for placement in a public school by the department or as a result of the appeal process shall be provided an educational program by the institution in which he is a school age resident. All such educational programs shall be in accordance with special education regulations of the state board of education."

Authority of the New Mexico State Board of Education

A. Applicability to All Agencies of the State - Section 22-2-2(J) NMSA 1978 - State Board Duties sets the authority of the State Board to prescribe courses of instruction, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions under the authority of the secretary of health.

B. Section 22-13-7 NMSA 1978 - Special Education - responsibility, defines the responsibility of the State to set standards for the conduct of special education: " (A) The state board of education shall make, adopt and keep current a state plan for special education policy, programs, and standards. (B) The department of education, with approval of the state board of education, shall set standards for diagnosis and screening, and educational offerings for exceptional children in public schools, in private nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of the health and environment department. (C) The state board shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional children in the public schools. This program shall be operated with the cooperation of local school districts. Portions of the program may be subcontracted and periodic reports regarding the efficacy of progress for exceptional children shall be made to the legislative education study committee."

C. Section 22-13-8(A) NMSA 1978 - Special Education - Private facilities for children with disabilities may be used as a contractor: "The responsibility of school districts, institutions and the state to provide a free public education for exceptional children is not diminished by the availability of private schools and services. Whenever such schools or services are utilized, it continues to be a state responsibility to assure that all exceptional children receive the education to which the laws of the state entitle them."

D. Section 22-13-6(B) NMSA 1978, defines "exceptional children" to mean: "School-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs".

E. Standards for Excellence for New Mexico Schools (SENMS) Compliance Manual, Chapter 5 adopted by the New Mexico State Board of Education include all children with disabilities as defined in the Individuals With Disabilities Education Act (IDEA) under 34 CFR 300.7.

1. Special Education: means (a) specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability including classroom instruction, instruction in physical education, home instruction and instruction in state supported educational programs, hospitals and institutions; (b) the term includes speech-language pathology and other related services consisting of specially designed instruction, at no cost to parents to meet the unique needs of a child with a disability and is considered special education rather than a related service; (c) the term also includes vocational education if specially designed instruction, at no coat to parents, to meet the unique needs of a child with a disability; (d) the term also includes physical education if it consists of specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability; (e) a child does not have a disability unless s/he is in need of special education; and (f) if a child is not in need of special education, there can be no related services (SENMS-CM 5 I.I.AC).

NOTE: The definition of Special Education in SENMS-CM will be amended by the NMSBE to include "instruction in other settings" with the list of settings in which specially designed instruction may be provided.

2. Related Services: means transportation and such developmental, corrective and other supportive services determined during the individualized education program meeting as required for a child with a disability to benefit from special education. Such services include audiological services, counseling services, early identification and assessment of disabilities in children, interpreter services, medical services for evaluation purposes, orientation and

mobility services, parent counseling and training, occupational and physical therapy, psychological services, recreation including therapeutic recreation, school health services, social work services and speech-language pathology. For age appropriate children with disabilities, rehabilitation counseling also would be considered a related service. These related services are not exhaustive and may include other developmental, corrective or supportive services such as artistic and cultural programs and art, music and dance therapy, if they are required to assist a child with a disability to benefit from special education (SENMS-CM 5 I.I.AA).

3. Children with Disabilities: means those school-aged children evaluated in accordance with SENMS, IDEA and its implementing regulations as being autistic, deaf, deaf-blind, hard of hearing, intellectually disabled, multi-disabled, orthopedically impaired, other health impaired, seriously emotionally/behaviorally disturbed, specific learning disabled, speech-language impaired, traumatic brain injured or visually impaired, who because of those impairments need special education and related services (SENMS-CM 5 I.I.D).

4. Preschool Children with Disabilities: means children ages three and four who are in need of special education and related services because of a significant delay or deficit in one or more areas of development including cognitive, physical, motor, language, social/emotional, self-help, vision or hearing, or who have been classified according to SENMS (SENMS-CM 5 I.I.V).

5. The New Mexico State Department of Education (NMSDE) assures that all children with disabilities and preschool children with disabilities will be served and receive a free appropriate public education if they are determined to be in need of special education and related services in accordance with an evaluation that meets the requirements of IDEA under 34 CFR 300.530-300.534 and SENMS-CM 5 I.III.B.

F. Definitions as used in the Public School Code, Section 22-1-2 NMSA 1978, as related to the Individuals With Disabilities Act are as follows:

1. ""private school" means a school offering programs of instruction not under the control, supervision or management of a local school board, exclusive of home instruction offered by the parent, guardian or one having custody of the student;

2. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

3. "local school board" means the governing body of a school district;

4. "public school" means that part of a school district which is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;

5. "state institution" means the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the Las Vegas medical center or the Carrie Tingley crippled children's hospital.

6. "home school" means the operation by a parent, guardian or other person having custody of a school-age person of a home study program which provides a basic academic educational program including but not limited to reading, language arts, mathematics, social studies and science"".

G. Further definitions of range of services, inclusive of children with disabilities are noted in Public School Code, Section 22-1-3 NMSA 1978, as follows:

1. ""elementary school" means a public school providing instruction for grades kindergarten through eight,

unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades kindergarten through six;

2. "secondary school" means a public school providing instruction for grades nine through twelve, unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades seven through twelve;

3. "junior high school" means a public school providing a junior high school program approved by the state board for grades seven through nine, or for grades seven and eight; and

4. "high school" means a public school providing instruction for any of the grades nine through twelve, unless there is a junior high school program approved by the state board for grades seven through nine, in which case it means a public school providing instruction for any of the grades ten through twelve." In Section 22-1-2(S) NMSA 1978, ""School" means any supervised program of instruction designed to educate a person in a particular place, manner and subject area.""

H. The requirements of 34 CFR 300.127 and 34 CFR 300.122 allow for all children with disabilities in the state to have available to them a free appropriate public education by September 1, 1980. All children are a priority with no single group within a category of disability superseding another group. New Mexico statutes are consistent with the availability of a free appropriate public education available to all children with disabilities in the state.

II. FULL EDUCATIONAL OPPORTUNITY GOAL

The following information is provided to demonstrate that the NMSDE has established a full educational opportunity goal for all children with disabilities, birth through twenty-one (34 CFR 300.123).

A. Goal Statement: The New Mexico State Board of Education affirms a goal of providing a full education opportunity to all children with disabilities in the State ages birth through twenty-one* (*Full Education Opportunity Goal includes children ages birth through twenty-one; whereas Free Appropriate Public Education is limited to children, three through twenty-one).

1. Facilities, Personnel and Services: The NMSDE shall meet the needs for facilities, personnel and services necessary to meet the full educational opportunity goal by a) requesting through the New Mexico State Board of Education from the Legislature funding based on the district projected number of fulltime equivalent students, b) continuing to include programs for children with disabilities in all educational facilities planning, c) continuing to study transportation needs and other related services addressed through state appropriation requests and available federal funds and d) collecting information on children with disabilities, ages birth through two, from the Part H lead agency, the Department of Health.

2. Improving Special Education and Related Services: Following are the NMSDE initiatives that have been adopted:

a. Secondary Education and Transition - Secondary education programs for children with disabilities are undergoing study for major reform due to Legislative mandates. Ongoing cooperative efforts with the NMSDE Division of Vocational Education and the Division of Vocational Rehabilitation ensure continued development of transition services that will enable children with disabilities to successfully transition from school to post secondary settings and employment.

b. Early Childhood - New Mexico law has permitted the provision of special education and related services to preschool children with disabilities below kindergarten age since July 1, 1986. During the December 1, 1992 child count, 3067 preschool children with disabilities were identified as receiving services. Those services were provided within school districts, in cooperation with other school districts, through contractual arrangements with nonpublic schools or community facilities and through cooperative agreements with other preschool or day care programs. Parent support, education and training have been delivered through advocacy groups, the Preschool and Infant Evaluation Program, school personnel and special grant funds for local and statewide training.

The State presently is focusing on improving the quality of special education and related services for preschool children with disabilities through interagency collaboration. The development of interagency collaboration will allow for more unified state level coordination and also the development of a comprehensive service delivery system.

c. Educational Technology - The NMSDE initiative is to develop methods for using technology in student learning, teacher training, instructional management and program administration through the following activities:

1) research and development of data-based systems and software to facilitate the utilization of information for statistical and programmatic uses;
2) development of federal funding applications for project resources to provide continued coordination and specialized technological assistance to district programs;
3) coordination with other NMSDE Offices to continue to improve data collection and analysis capabilities for more efficient and effective program management and development of programs for internal operation;
4) research and development of a statewide network for dissemination of information pertaining to children with disabilities.

d. Comprehensive System of Personnel Development (CSPD) - The NMSDE has designated as one of its initiatives Personnel Development - Improvement and Implementation of a Comprehensive System of Personnel Development, in conjunction with on-going efforts toward quality improvement in personnel preservice and inservice to insure that all special education personnel are appropriately trained and licensed. The New Mexico Comprehensive System of Personnel Development was established to help insure that all personnel necessary to provide an appropriate education for children with disabilities are qualified and that activities sufficient to implement the personnel plan of the State are scheduled. It includes procedures for acquiring and disseminating significant information derived from research and demonstration and for adopting promising educational practices. It also includes provisions for inservice training of general and special education instructional, related services and support personnel.

The NMSDE has targeted the continuation and expansion of personnel development activities as one of its major initiatives to include: 1) the development of a Special Education Long Range Planning Task Force to identify statewide personnel development needs; 2) the development of public education agency long range planning to address local personnel development needs; 3) coordination of activities for review of certification/licensure requirements and analysis and review of personnel preparation requirements in areas of special education certification/licensure; 4) collaboration among the NMSDE, institution of higher education personnel preparation programs and public education programs through a) liaison with institutions of higher education and information sharing, b) improvement of the special education personnel data base and teacher supply/demand data and use of these data in planning and c) continued support of teacher recruitment and retention efforts through improved institution of higher education/public education agency information sharing and cooperation; 5) evaluation of the NMSDE dissemination and diffusion activities consistent with CSPD requirements of IDEA, EDGAR and the implementation of recommendations; and 6) maximum use of resources for inservice training through the sharing of information. Through the implementation of these CSPD activities, it is anticipated that all children with disabilities in the State will benefit by having qualified personnel who can develop and implement appropriate educational opportunities. IDEA fund recipients are urged to use entitlement and discretionary funds to implement CSPD activities in each public education agency. Personnel needs are contingent upon the scope and nature of each public education agency CSPD plan.

B. Data requirements of 34 CFR 300.123-127 are met through the submission of the Annual Data Report.

III. CHILD IDENTIFICATION

The NMSDE insures that all children with disabilities, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated, and that a practical method is developed and implemented to determine which children currently are receiving and which currently are not receiving needed special education and related services. The State Plan must provide information on responsibilities for coordinating, planning and implementing identification, location and evaluation activities (34 CFR 300.128).

A. It is the policy of the NMSDE that free appropriate public education opportunities shall be made available to all children, ages three through twenty-one, with disabilities regardless of the severity of their disability. The NMSDE has the responsibility for the statewide coordination of the planning and implementation of the identification, location and evaluation of all children, birth through twenty-one, in need of special education and related services.

B. Each public education agency must publish procedures which insure that all children, including children with disabilities in all public and private agencies and institutions residing in the jurisdiction of the public education agency regardless of the severity of their disability and who are in need of special education and related services are identified, located and evaluated, including a practical method of determining which children are currently receiving special education and related services and which children are not currently receiving needed special education and related services (SENMS-CM 5.1.II.A).

C. Out of School Child Identification: Establish child-find activities to locate and identify children who are not attending school and who may have a disability. The term "out-of-school" includes children ages birth through twenty-one not in school. Under this plan, public education agencies are required to identify, locate and evaluate children who may have a disability and may refer children ages birth through twenty-one to other agencies for evaluation or conduct the evaluation at no cost to the parent(s). Public education agencies are responsible for the evaluation of school-aged children who may have a disability and notification to the public of the availability of special education services in the public education agency.

D. In School Child Identification: Establish an active system for screening the general school population for possible special needs including referral for formal evaluation. The term "in-school" includes children of school age enrolled in private schools who have a disability or are suspected of having a disability. Establish uniform criteria necessary for the determination of referrals for formal evaluation. Notify parents of the responsibilities of the public education agency for special education services and the availability of procedural safeguards. While the NMSDE has the overall responsibility for coordinating statewide Child Find activities, the actual identification occurs at the local level. Each public education agency designates a person responsible for coordinating identification activities. The following activities have been implemented and the following resources utilized in New Mexico Child Find activities.

E. Child Find Activities: Out-of-School Child Find activities focus on the ongoing process of location and identification of children who currently are not enrolled in school, who are suspected of having a disability and may be in need of special education services. In-school child find activities focus on the ongoing location and identification of children who currently are enrolled in school, who are suspected of having a disability and who may be in need of special education services. The focus is on the development of public awareness of local child identification procedures and knowledge of special education services available in the public education agency. This requires an ongoing effort designed to foster public support and understanding of each public education agency Child Find Program.

1. To assist public education agencies and to coordinate statewide Child Find activities, the NMSDE in coordination with New Mexico Parents Reaching Out and the Department of Health, jointly support a statewide toll-free Child Find Hot Line. Staff from New Mexico Parents Reaching Out receive and respond to all incoming calls. This activity is ongoing and utilizes the combined resources of the three collaborating agencies. It allows for immediate access by the public to information regarding appropriate agency contacts and services.

2. The NMSDE, the Department of Health, the Human Services Department, Head Start and the Indian Health Service have established a Memorandum of Agreement which states a commitment to ensure a comprehensive child find system in the state and formalizes an agreement among the agencies to a) coordinate major efforts to identify and locate children birth to age five years of age who may have a developmental disability, b) refer all identified children to the appropriate agency for the purpose of receiving an evaluation and/or intervention services, c) promote the utilization of local and state level resources to enhance the child find system and prevent duplication, d) encourage the development of local interagency initiatives and agreements to enhance service delivery and planning, e) provide agency representation on committees, work groups and task forces when appropriate and relevant to child find activities, f) endorse and implement, when appropriate, policies and procedures for the location, identification, screening and evaluation of children, g) maintain financial support for the ongoing implementation of a statewide comprehensive child find system, h) provide information, assistance and training necessary to carry out the work of a comprehensive child find system and i) meet at least annually to evaluate the effectiveness of the statewide child find system. This project is ongoing and utilizes the combined resources of the four collaborating agencies. It supports a coordinated and comprehensive statewide child find system.

3. Public education agency public awareness campaigns include the use of radio and television, speeches and presentations to civic and social organizations, distribution of brochures, bumper stickers, fliers, fact sheets, public enclosures, shopping center displays and public information booths. Such campaigns use community resources and all forms of media to increase the public awareness of the purpose of local Child Find Programs and the special education services offered by the public education agency. Information disseminated to parents by radio/TV broadcasts, as appropriate, is translated into the dominant language of the community. These activities are ongoing and supported through individual public education agency resources or combined resources from public education agency members of regional center cooperatives. These child find activities are selected to specifically meet the needs of the particular community and result in local community awareness.

4. Professional and public service organizations are involved in assisting the public education agencies in the Child Find referral process. They may include the following agencies: parent advocacy organizations, county health departments, mental health services, local medical and dental societies, community developmental disabilities centers, local human services field offices, Head Start, Children's Medical Services, professional and social services organizations, tribal officials and community services, Bureau of Indian Affairs and local churches. The roles of the above agencies consist of information sharing and cross-agency referral activities and are determined by the public education agency and its specific needs. These activities are ongoing and supported through public education agency resources or the combined resources from public education agency members of Regional Center Cooperatives. They result in collaboration among agencies for more a more effective child find system at the community level.

5. In accordance with State Statute, Section 28-16-12 NMSA 1978: "The state shall have a timely, comprehensive, multi-disciplinary system for evaluating infants, toddlers and preschool age children suspected of having developmental delays. Evaluations for infants and toddlers shall address family service needs and shall include training capabilities to education community providers and parents in the understanding and application of the evaluations. This evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of public health division of the health and environment department, the university of New Mexico's developmental disabilities team and the state department of public education". The University of New Mexico Preschool and Infant Evaluation Program and the Children's Medical Services Bureau of the Public Health Division of the Department of Health are the major referral recipients for evaluation and/or service from public education agencies for children below school age. The New Mexico Preschool and Infant Evaluation Program directs referrals of children younger than school age to appropriate community-based programs and maintains a data base on these referrals. This information is shared with the appropriate public education agencies. This process is ongoing and is supported through state resources. It results in a coordinated statewide effort to locate and evaluate infants, toddlers and preschool children suspected of having a developmental disability.

6. Each local school must provide an active system for screening the general school population for possible special needs, including special education services. This process is ongoing, supported through public education agency resources and results in a means of locating students who may have a disability and be in need of special

education services.

7. A referral for formal evaluation is made when it is suspected that a student may have a disability. The referral may be made by the parent, physician, community agencies, school personnel or as a result of any district-wide evaluation or screening program which the public education agency provides for all students. Whether from general screening or from direct referrals, public education agencies shall maintain a record of the receipt, processing, and disposition of referrals for multidisciplinary evaluation. Prior to referral for multidisciplinary evaluation, the public education agency also shall document the implementation of prereferral intervention strategies. This process is supported through public education agency resources and results in the evaluation of students who may have a disability and be in need of special education services (SENMS-CM 5 I.III.B(A)).

8. The following state supported educational programs (SSEP) and institutions also are responsible for identifying children who may have a disability and be in need of special education services -- New Mexico School for the Deaf, New Mexico School for the Visually Handicapped, Los Lunas Hospital and Training School, New Mexico Boys' School, New Mexico Girls' School/Youth Diagnostic and Development Center, Center for Adolescent Relationship Exploration - Las Vegas Medical Center, Mimbres School - Children's Psychiatric Hospital and Sequoyah, an Adolescent Treatment Center. This process is ongoing, supported through SSEP resources and results in the location and evaluation of students who may have a disability or suspected additional disability and be in need of special education services.

These child find activities have allowed the state to achieve an ongoing statewide process of location and identification of children with disabilities who may be in need of special education services. The collaboration of resources from the NMSDE, the public education agencies and other agencies will continue to result in an effective and coordinated statewide child find effort.

F. The NMSDE reviews public education agencies for compliance with this section by conducting comprehensive on-site compliance reviews, by review and approval of annual IDEA Applications and through the ongoing collaboration between the NMSDE and the public education agency in the implementation of public education agency long range plans for special education.

G. The NMSDE maintains an ongoing process for soliciting and compiling data relative to unmet special education needs from all public education agencies:

1. The NMSDE requires, at a minimum, that public education agencies report the a) number and type of personnel needed to provide special education and related services and b) special education instructional services and related services in need of improvement.

2. The NMSDE annually requests that public education agencies report their projected needs for special education, evaluation, instructional and related services personnel for the following year. The information received from such reports is used by the State to assist the public education agencies in a national recruiting effort to fill personnel vacancies and plan program delivery for the ensuing year.

3. Methods used to determine which children are unserved in special education are a) analysis of child census reports, surveys and needs assessment information and b) on-site compliance review activities.

IV. INDIVIDUALIZED EDUCATION PROGRAMS

The NMSDE insures that each public education agency in New Mexico maintains records of the Individualized Education Program (IEP) for each child with a disability who is in need of special education and establishes, reviews and revises each IEP as required by the federal regulations described in this section. The NMSDE regulates the manner in which public education agencies carry out these requirements through review and evaluation of the programs (34 CFR 300.130).

Specifically, the NMSDE insures that each public education agency develops an IEP for each child with a disability who is in need of special education, including those children with disabilities referred to a nonpublic school or who attend private school and receive special education from the public education agency (34 CFR 300.341)(SENMS-CM 5 I.IV.B(B)). Each public education agency must develop an IEP prior to providing special education and related services to a child with a disability. The public education agency must implement the IEP as soon as possible (34 CFR 300.342)(SENMS-CM 5 I.IV.B(C)).

A. Continuing Students: At the beginning of each school year, each public education agency must have in effect a written IEP for every child with a disability who is in need of special education from that agency.

Children ages birth through two have an individualized family service plan (IFSP) in compliance with the program standards of the regulatory agency, the New Mexico Department of Health. To insure a smooth transition for children receiving services under IDEA Part H who are determined to be in need of services under IDEA Part B, policies, procedures and guidelines have been adopted by the New Mexico Department of Health, IDEA Part H designated lead agency. The NMSDE assures that public education agencies coordinate with the community programs for successful implementation of these policies and procedures to support the transition of the child from early intervention services to other appropriate services. The NMSDE requires each public education agency as part of the transition plan for children with disabilities two years of age who will become three years of age during the school year to develop and to have in effect for each child an Individualized Education Program (IEP) or, with parental concurrence, an Individualized Family Service Plan (IFSP) upon the child's third birthday when that child has been receiving services under IDEA Part H and has been determined to be in need of special education services under IDEA Part B.

The NMSDE collaborates with the New Mexico Department of Health through: 1) interagency planning with the IDEA Part H Interagency Coordinating Council and the IDEA Part B State Advisory Panel; 2) interagency joint training and technical assistance statewide; and 3) development of a Memorandum of Agreement addressing appropriate interagency transition commitments and assurances.

B. Newly Placed Students: Children ages birth through two will have an IFSP in effect before special education or related services are provided to the child and the IEP or IFSP will be implemented as soon as possible. As appropriate, children with disabilities ages three through twenty-one will have an IEP. The IEP must be in effect before special education and related services are provided to a child and be implemented as soon as possible as specified in 34 CFR 300.342 and SENMS-CM 5 I.IV.B(C).

The IEP will be implemented immediately following the IEP meeting during which the child is found in need of special education services. An exception to this would be: 1) when the child is identified at a time which would necessitate meetings during the summer or a vacation period; 2) when there are circumstances which require a short delay such as working out transportation arrangements or arranging for the availability of appropriate service providers in which case extensive documentation is required as to the reasons for delay and attempts to resolve the circumstances causing the delay; or 3) interim services for a child as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the child; temporary services shall not become the final services before the IEP is finalized. When it is determined by the IEP Team that interim services for a child with a disability are appropriate, the IEP Team with parent participation shall: 1) develop an "interim" IEP for the child which sets out the specific conditions and timelines for the trial services; 2) insure that the parents agree to the interim services before they are implemented, and that they are involved throughout the process of developing, reviewing and revising the child's IEP; 3) set a specific timeline, for example thirty (30) days, for completing the evaluation and making judgements about the appropriate services for the child; and 4) conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP. However, there can be no undue delay in providing special education and related services to the child.

Procedures for Individualized Education Programs (IEPs)

SENMS-CM 5 I.I.L states "Individualized Education Program (IEP): means a written statement for a child with a disability(ies) and implemented in accordance with these rules, IDEA and its implementing regulations. The IEP serves as a communication vehicle between parents and school personnel and enables them as equal participants to decide jointly what the child's needs are, what services will be provided to meet those needs, what the anticipated outcomes may be and how the child's progress toward meeting the projected outcomes will be evaluated. For preschool children with disabilities, an Individualized Family Service Plan (IFSP), as defined in Part H of IDEA, may be utilized as long as the IFSP meets the content requirements of an IEP as defined in Section IV, Subsection B of these rules."

New Mexico has established procedures to assure that each public education agency maintains written records of the IEP for each child with a disability who is served. Each public education agency must establish, implement, review and revise, at least annually, IEPs for each child. The New Mexico IEP procedures (SENMS-CM 5 I.IV.B) meet the requirements for IEPs set out 34 CFR 300.340-300.350 as well as additional requirements of 34 CFR 300.303-308.

A. The public education agency shall insure that each meeting includes the following persons: 1) a representative of the public education agency, other than the child's teacher, who is qualified to provide or supervise the provision of special education; 2) the child's teacher(s); 3) one or both of the child's parents; 4) the child, where appropriate; and 5) other individuals at the discretion of the parent or public education agency (34 CFR 34 300.344)(SENMS-CM 5 I.IV.B(E)).

B. For a child with a disability who has been evaluated for the first time, the public education agency shall insure: 1) that a member of the evaluation team participates in the meeting; or 2) that the representative of the public education agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation (34 CFR 300.344)(SENMS-CM 5 I.IV.B(E)).

C. If the purpose of the meeting is the consideration of transition services for a student, the public education agency shall invite: 1) the student; and 2) a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend, the public education agency shall take other steps to insure that the student's preferences and interests are considered. If an agency invited to send a representative to a meeting does not do so, the public education agency shall take other steps to obtain the participation of the other agency in the planning of any transition services (34 CFR 300.344(c)).

NOTE: The transition requirements in SENMS-CM will be amended by the New Mexico State Board of Education to include all requirements of 34 CFR 300.344(c).

D. The public education agency must give parents an opportunity to participate in each meeting by notifying them early enough and by scheduling the meeting at a mutually agreed upon time and place. The notice must state the purpose, time and place of the meeting and who will be in attendance. If a purpose of the meeting is the consideration of transition services for a student, the notice also must indicate this purpose, indicate that the public education agency will invite the student and identify any other agency that will be invited to send a representative. If parents cannot attend the meeting, the public education agency must try to insure parent participation through telephone calls and other alternatives and must record attempts to arrange a mutually agreeable time and place. The agency also must take whatever action is necessary to insure that parents understand what is occurring during the meeting, including arrangements for interpreters. The public education agency shall give the parent, on request, a copy of the individualized education program (34 CFR 300.345)(SENMS-CM 5 I.IV.B(F)).

NOTE: The parent participation requirements in SENMS-CM will be amended by the New Mexico State Board of Education to include all requirements of 34 CFR 300.345(b)(2).

E. The public education agency insures that required individuals participate in the IEP meeting. Each public education agency takes steps to insure that one or both of the child's parents are present at each IEP meeting or are afforded the opportunity to participate notifying parents early enough to insure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the time and location of the meeting and who will be in attendance. If neither parent can attend, the public education agency shall use other methods to insure parent participation including individual or conference telephone calls (34 CFR 300.345)(SENMS-CM 5 I.IV.B(F)).

F. An IEP meeting may be conducted without a parent in attendance if the public education agency is unable to convince the parents that they should attend. The public education agency must have a record of its attempts to arrange a mutually agreed on time and place such as: 1) detailed records of telephone calls made or attempted and the results of those calls; 2) copies of correspondence sent to the parents and any responses received; and 3) detailed records of visits made to the parent's home or place of employment and the results of those visits. The public education agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting including arranging for an interpreter for parents who are deaf or whose native language is other than English. The public education agency shall give the parent, on request, a copy of the individualized education program (34 CFR 300.345)(SENMS-CM 5 I.IV.B(F)).

G. The IEP must be developed by the IEP Team with parent participation, prior to the initiation of special education and related services. The IEP includes the required components of IDEA and SENMS-CM:

1. a statement of the child's present levels of educational performance which must accurately describe the effect of the child's disability on the child's performance in any area that is affected and must be written in objective measurable terms;

2. a statement of annual goal(s) including measurable short-term instructional objectives;

3. a statement of the specific special education and related service(s) to be provided to the child and the extent to which the child will participate in general education programs. The amount of service(s) to be provided must be stated and the amount of time to be committed to each service(s) must be stated;

4. a description of modifications to the child's general education program, if modifications are necessary to ensure the child's participation in that program;

5. the projected date(s) for initiation of service(s) and the anticipated duration of the service(s);

6. appropriate objective criteria and evaluation procedure(s) and schedule(s) for determining, on at least an annual basis, whether the annual goal(s) and measurable short-term instructional objectives are being achieved;

7. a statement of needed transition services for a child, beginning at age 16 or younger, including, when appropriate, a statement of the interagency responsibilities and/or linkages before the child leaves the school setting;

8. the signature and position of each participant present during the development of the IEP;

9. a description of transition services. The IEP for each student, beginning no later than age sixteen (16) and at a younger age if determined appropriate, must include a statement of the needed transition services as defined in 34 CFR 300.18, including, if appropriate, a statement of each public education agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. Transition services mean a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment including supported employment, continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must: 1) be based on the individual student's needs, taking into account the student's preferences and interests; and 2) include instruction, community experiences, the development

of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

NOTE: The *IEP* requirements in SENMS-CM will be amended by the New Mexico State Board of Education to include all requirements of 34 CFR 300.345(b).

H. The public education agency is responsible for conducting meetings to develop, review and revise the IEP. When the public education agency determines that a child is in need of special education and related service, it must hold a meeting to develop an IEP within thirty (30) calendar days. The public education agency must conduct meetings to review, and if necessary, revise programs at least once a year (34 CFR 300.343)(SENMS-CM 5 I.IV.B(G)).

IEP Team Responsibilities:

1. Prior to making program recommendations, the IEP Team is responsible for insuring that all appropriate evaluation data, inclusive of summary reports from those individuals assessing the child, have been gathered. If data are incomplete, the IEP Team shall request further information;

2. The IEP Team establishes the need for special education and related services consistent with IDEA and SENMS-CM 5 I.IV.B;

3. The IEP Team develops the IEP prior to initiation of services, reviews at least annually the progress of students receiving special education services and makes written recommendations regarding the continuation, termination or modification of those services in accordance with the assessed needs.

I. The NMSDE regulates the manner in which public education agencies maintain IEP records for each child receiving special education and how public education agencies review and revise each IEP as required by federal regulations (34 CFR 300.130).

1. Public Agencies: The NMSDE insures that each public agency providing special education develops and implements an IEP for each child with a disability.

2. Private Schools and Facilities: The NMSDE insures that an IEP is developed and implemented for each child with a disability who a) is placed in or referred to a private school or facility by a public agency, or b) is enrolled in a parochial or other private school and receives special education and related services from a public education agency.

3. Children with disabilities placed in or referred to a private facility by the public education agency are provided special education and related services, in accordance with an IEP, at no cost to the parent(s).

4. The nonsectarian, nonprofit educational training center shall implement an IEP for each enrolled child with a disability for whom services have been contracted. A child placed in a private facility by a public education agency shall have an IEP developed prior to placement. The public education agency may develop the IEP jointly with the contracted private nonprofit agency/school; however, final responsibility for the IEP is maintained with the public education agency.

Each child receiving contracted educational services shall have his/her current records reviewed annually by the local IEP Team to determine if the child's level of performance requires a change in services.

J. Before placing a child in a nonpublic school, a public education agency must hold a meeting to develop an IEP. The public education agency must insure that a representative of the nonpublic school participates in the development of the IEP. After placement, the nonpublic school may conduct meetings to review and revise the IEP, however, the parent(s) and a public education agency representative participate in those meetings and agree to any proposed change. The NMSDE and the public education agency remain responsible for complying with the requirements of

34 CFR 300.348 and SENMS-CM 5 I.IV.B(I).

When a nonpublic school child receives special education or related services from a public education agency, the public education agency must conduct required meetings to develop, review and/or revise an IEP. In accordance with 34 CFR 300.348 and SENMS-CM 5 I.IV.B(J), the public education agency must insure that the nonpublic school attends the required meetings.

K. Children with Disabilities in Private Schools Placed or Referred by Public Education Agencies: (SENMS-CM 5 I.VI.(A)): Prior to a public education agency placing a child with a disability in or referring a child with a disability to a private school or facility, the public education agency shall initiate and conduct a meeting to develop an IEP for the child. The public education agency shall insure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the public education agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

1. Reviewing and Revising IEPs: Subsequent to a child with a disability entering a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility, at the discretion of the public education agency. If the private school or facility initiates and conducts these meetings, the public education agency shall insure that the parents and a public education agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP prior to those changes being implemented.

2. Responsibility: Even if a private school or facility implements a child's IEP, responsibility for compliance with IEP requirements remains with the public education agency and the NMSDE.

L. Children With Disabilities in Private Schools Not Placed or Referred By Public Education Agencies (SENMS-CM 5 I.VI.(B)): If a child with a disability is enrolled in a parochial or other private school and receives special education and related services from a public education agency, the public education agency shall:

1. Initiate and conduct meetings to develop, review and revise an IEP for the child in accordance with this Plan;

2. Insure that representatives of the parochial or other private school attend each meeting. If the representative(s) cannot attend, the public education agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

If a participating agency fails to provide agreed upon transition services contained in the IEP of a student with a disability, the public education agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

NOTE: The accountability requirements in SENMS-CM will be amended by the New Mexico State Board of Education to include all requirements of 34 CFR 300.347.

Individualized Education Program Accountability

Each public education agency must provide special education and related services to a child with a disability in accordance with an IEP. This does not require that any agency, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goal(s) and objectives. An IEP does not constitute a guarantee by the public education agency and the teacher that the child will progress at a specified rate. Agencies and teachers are not relieved from making good faith efforts to assist the child in achieving the goal(s) and objectives listed in the IEP. A parent has a right to ask for revisions of the child's IEP or to invoke due process procedures if the parent believes that a good faith effort is not being made by the agency.

Additional Procedures

A. Each public education agency shall insure that the hearing aids worn by children with hearing impairments in school are functioning properly (SENMS-CM 5 I.IV.A(C)).

B. The NMSDE shall insure that each public education agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public education agency (SENMS-CM 5 I.IV.A(D)).

C. Each public education agency shall take steps to insure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the public education agency including art, music, industrial arts, consumer and homemaking education and vocational education (SENMS-CM 5 I.IV.A(E)).

D. Each public education agency shall take steps to provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational services, special interest groups or clubs sponsored by the public education agency, referrals to agencies which provide assistance to individuals with disabilities and employment of students, including both employment by the public education agency and assistance in making outside employment available (SENMS-CM 5 I.IV.A(F)).

E. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education. Each child with a disability must be afforded the opportunity to participate in the general physical education program available to children without disabilities unless the child is enrolled fulltime in a separate facility or the child needs specially designed physical education as prescribed in the child's IEP. If specially designed physical education is prescribed in a child's IEP, the public education agency responsible for the education of that child shall provide the services directly or make arrangements for them to be provided through other public or private programs. The public education agency responsible for the education of a child with disabilities who is enrolled in a separate facility shall insure that the child receives appropriate physical education services (SENMS-CM 5 I.IV.A(G)).

V. PROCEDURAL SAFEGUARDS

The New Mexico State Board of Education and the Standards for Excellence for New Mexico Schools (SENMS) establish the following procedural safeguards to insure that children with disabilities and their parents or guardians are guaranteed the following rights with respect to the provision of a free appropriate public education (FAPE). Each public education agency shall establish and implement procedural safeguards that meet the requirements of 34 CFR 300.500-300.515 and SENMS-CM 5 I.III.A.

A. "Consent" means the parent: 1) has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication; 2) understands and agrees in writing to the carrying out of the activity for which his or her consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and 3) understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time (34 CFR 300.500)(SENMS-CM 5 I.I(E)).

"Evaluation" means procedures are used in accordance with 34 CFR 300.530-534 AND SENMS-CM to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade or class (34 CFR 300.500)(SENMS-CM 5 I.I(I)).

"Personally identifiable" means that information includes: 1) the name of the child, the child's parent or other family member; 2) the address of the child; 3) a personal identifier such as the child's social security number or student number; and 4) a list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty (34 CFR 300.500)(SENMS-CM 5 I.I(S)).

Opportunity to Examine Records

The parent(s) or guardian(s) of a child with a disability shall be afforded, in accord with the requirements of 34 CFR 300.562-569, an opportunity to inspect and review all education records with respect to the identification, evaluation, educational services for the child, and the provision of a free appropriate public education to the child (34 CFR 300.502)(SENMS-CM 5 I.III.A(D)).

Opportunity to Obtain Independent Educational Evaluation

A. "Independent educational evaluation" means an evaluation conducted by a qualified examiner(s) who is not employed by the public education agency responsible for the education of the child in question (34 CFR 300.513)(SENMS-CM 5 I.I(L)).

"Public expense" means that the public education agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent consistent with 34 CFR 300.301 (34 CFR 300.513)(SENMS-CM 5 I.I(Y)).

B. The parents of a child with a disability have the right to an independent educational evaluation of their child pursuant to 34 CFR 300.503 and SENMS-CM (34 CFR 300.513)(SENMS-CM 5 I.III.A(E)). Each public education agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

1. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public education agency.

2. The public education agency may initiate a hearing under 34 CFR 300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

3. If the parent obtains and independent educational evaluation at private expense, the results of the evaluation (a) must be considered by the public education agency in any decision made with respect to the provision of FAPE the child and (b) may be presented as evidence at a hearing regarding that child.

4. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

5. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public education agency uses when it initiates an evaluation.

Written Notice

A. Written notice which meets the requirements of 34 CFR 300.505 and SENMS-CM 5 I.III.A(C) must be given to the parents of a child with a disability a reasonable time before the public education agency: 1) proposes to initiate or change the identification, evaluation or educational services for a child or provision of a free appropriate public education to the child; or 2) refuses to initiate or change the identification, evaluation or educational services for the child or the provision of a free appropriate public education to the child (34 CFR 300.504)(SENMS-CM 5 I.III.A(B)).

1. Parental consent must be obtained before a) conducting an evaluation and b) initial delivery of special education and related services to a child with a disability.

2. If a parent refuses consent, the public education agency may use the hearing procedures in 34 CFR 300.506-300.508 and SENMS-CM 5 I.III.A(H) to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the public education agency may evaluate or initially provide special education and related services to the child without the parent's consent subject to the parent's rights under 34 CFR 300.510-300.513 and SENMS-CM 5 I.III.A(H-Q).

3. A public education agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required.

4. Any changes in a child's special education program after the initial delivery of services are not subject to the parental consent requirements but are subject to the prior notice requirements of 34 CFR 300.504-300.505 and SENMS-CM 5 I.III.A(A-B) and the IEP requirements of 34 CFR 300.340-300.350 and SENMS-CM 5 I.IV.B.

B. The written notice provided by the public education agency under 34 CFR 300.504 and SENMS-CM 5 I.III.A(B) must include the following:

1. a full explanation of all of the procedural safeguards available to the parents under 34 CFR 300.500, 34 CFR 300.502-300.515, 34 CFR 300.562-300.569 and SENMS-CM 5 I.III;

2. a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action and a description of any options the agency considered and the reasons why those options were rejected; and

3. a description of any other factors that are relevant to the agency's proposal or refusal.

C. The written notice provided by the public education agency must be: 1) written in language understandable to the general public; and 2) provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.

D. If the native language or other mode of communication of the parent is not a written language, the state education agency or public education agency shall take steps to insure: 1) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; 2) that the parent understands the content of the notice; and 3) that there is written evidence that these requirements have been met.

Impartial Due Process Hearings

A. A parent or a public education agency may initiate a hearing on any of the matters described in 34 CFR 300.504 and SENMS-CM 5 I.III.A.

1. The hearing is conducted according to SENMS-CM 5 I.III.A(I).

2. The public education agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if a) the parent requests the information or b) the parent or the agency initiates a hearing.

3. Although the process of mediation is not required, public education agencies may suggest mediation in disputes concerning the identification, evaluation and delivery of educational services to children with disabilities and the provision of a free appropriate public education to those children. Mediation may be conducted by trained mediators or public education agency personnel not previously involved in the particular case. Mediation may lead

to resolution of differences between parents and public agencies; however, mediation shall not be used to deny or delay a parent's rights to a hearing.

B. Hearing rights specified in 34 CFR 300.508 and SENMS-CM 5 I.III.A(K) state that any party to a hearing has the right to: 1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; 2) present evidence and confront, cross-examine and compel the attendance of witnesses; 3) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing; 4) obtain a written or electronic verbatim record of the hearing; and 5) obtain written findings of fact and decisions.

C. The public agency after deleting any personally identifiable information shall transmit the findings and decisions to the State advisory panel and make those findings and decisions available to the public.

D. Parents involved in the hearing must be given the right to: 1) have the child who is the subject of the hearing present; and 2) open the hearing to the public.

E. A decision made in a hearing conducted under 34 CFR 300.506 and SENMS-CM 5 I.III.A(I) is final unless a party to the hearing appeals the decision under 34 CFR 300.510 or 34 CFR 300.511 and SENMS-CM 5 I.III.A(I-O).

Administrative Appeal; Impartial Review

A. Impartial due process hearings are conducted by the public education agency directly responsible for the provision of a free appropriate public education to the child with a disability. Any party aggrieved by the findings and decision in the hearing may appeal to the NMSDE according to procedures in SENMS-CM 5 I.III.A(N).

1. If there is an appeal, the NMSDE shall conduct an impartial review of the hearing. The official conducting the review shall a) examine the entire hearing record, b) insure that the procedures at the hearing were consistent with the requirements of due process, c) seek additional evidence if necessary and if a hearing is held to receive additional evidence, the rights in 34 CFR 300.508 and SENMS-CM 5 I.III.A apply, d) afford the parties an opportunity for oral and written argument, or both, at the discretion of the reviewing official, e) make an independent decision on completion of the review, and f) give a copy of written findings and the decision to the parties.

2. The NMSDE, after deleting any personally identifiable information, shall transmit the findings and decisions to the State advisory panel and make those findings and decisions available to the public.

3. The decision made by the reviewing official is final unless a party brings civil action under 34 CFR 300.511 and SENMS-CM 5 I.III.A(O).

4. The NMSDE may conduct its review either directly or through another state agency acting on its behalf; however, the NMSDE remains responsible for the final decision on review.

5. All parties have the right to continue to be represented by counsel at the State administrative review level whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the rights in 34 CFR 300.508 and SENMS-CM 5 I.III.A(K) relating to hearings apply.

B. Civil Action: Any party aggrieved by the findings and decisions made by a reviewing officer under 34 CFR 300.510 and SENMS-CM 5 I.III.A(M) has the right to bring a civil action.

C. The public education agency shall insure that no later than forty-five (45) days after the receipt of a request for hearing a final decision is made and a copy of the decision is mailed to each of the parties. The NMSDE shall insure that not later than thirty (30) days after the receipt of a request for a review a final decision is reached in the review and a copy of the decision is mailed to each of the parties. A hearing or reviewing officer may grant specific extensions of time at the request of either party. Each hearing and each review involving oral argument must be conducted at a time and place that is reasonably convenient to the parents and the child involved (34 CFR 300.512)(SENMS-CM 5 LIII.A(P)).

D. During the pendency of any administrative or judicial proceeding regarding a hearing, unless the public education agency and the parents of the child agree otherwise, the child involved in the hearing must continue to receive his or her present educational services. If the hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until completion of all the proceedings. A child's services may not be changed during a hearing proceeding unless the parents and public education agency agree otherwise. While the educational services may not be changed, this does not preclude the public education agency from using its normal procedures for addressing children who are endangering themselves or others (34 CFR 300.513)(SENMS-CM 5 LIII.A(Q)).

Surrogate Parents

A. Each public education agency shall insure that the rights of a child are protected when: 1) no parent as defined in 34 CFR 300.13 and SENMS-CM 5 LI(Q) can be identified; 2) the public education agency, after reasonable efforts, cannot discover the whereabouts of a parent; or 3) the child is a ward of the state under the laws of the state.

B. The duty of a public education agency includes the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child (34 CFR 300.514)(SENMS-CM 5 LIII.A(R)).

C. The public education agency may select a surrogate parent in any way permitted under New Mexico law and SENMS-CM. Public education agencies shall insure that a person selected as a surrogate has no interest that conflicts with the interest of the child he or she represents and has knowledge and skills that insure adequate representation of the child.

1. A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

2. A person who otherwise qualifies to be a surrogate parent is not an employee of the public education agency solely because he or she is paid by the agency to serve as a surrogate parent.

D. The surrogate parent may represent the child in all matters relating to the identification, evaluation and educational services for the child and the provision of FAPE to the child.

VI. CONFIDENTIALITY OF INFORMATION

A. The NMSDE adheres to the definitions of destruction, education records and participating agency, as defined in 34 CFR 300.560 and SENMS-CM 5.I.

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education Records" means the type of records covered under the definition of education records in Part 99, implementing regulations for the Family Educational Rights and Privacy Act of 1974.

"Participating Agency" means any agency or institution that collects, maintains or uses personally identifiable information or from which information is obtained.

B. Notice to Parents: Notice shall be given which is adequate to fully inform parents about the requirements under

300.128, including those requirements of 34 CFR 300.561. The NMSDE and each participating agency, as required, shall fully notify parents of the requirements related to the identification, location and evaluation of children with disabilities before the activity. This notice includes: 1) a description of the extent to which the notice is given in the native languages of the various population groups; 2) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods used in gathering information including the sources from whom information is gathered and the uses to be made of the information; 3) a summary of the policies and procedures which must be followed regarding storage, disclosure to third parties, retention and destruction of personally identifiable information; and 4) a description of all the rights of parents and children regarding this information, including the rights to inspection and review of education records, amendment of education records, disclosure of personally identifiable information from education sources and enforcement of confidentiality procedures. Before any major identification, location or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents of the activity.

C. Access Rights: Each participating agency shall permit parents to inspect and review any education records according to 34 CFR 300.562 and SENMS-CM 5 I.III.E(A). The NMSDE requires each participating agency to permit parents to inspect and review any educational record relating to their children which are collected, maintained or used by the agency. Each agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation or delivery of services to the child and in no case more than 45 days after the request has been made. The right to inspect and review educational records includes: 1) the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; 2) the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records; and 3) the right to have a representative of the parents inspect and review the records.

The agency may presume that the parent has the authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

D. Record of Access: The NMSDE requires each participating agency to keep a record of parties obtaining access to educational records collected, maintained or used including: 1) the name of the party accessing the record; 2) the date access was given; and 3) the purpose for which the party is authorized to use the records (34 CFR 300.563)(SENMS-CM 5 I.III.E(B)).

E. Records on More Than One Child: The NMSDE requires that the confidentiality procedures of each participating agency insure that when education records include information on more than one child, the parents have the right: 1) to inspect and review only those records relating to their child; or 2) to be informed of that specific information (34 CFR 300.564)(SENMS-CM 5 I.III.E(C)).

F. List of Types and Location of Information: The NMSDE requires each participating agency to provide parents, on request, a list of the types and locations of educational records collected, maintained or used by the agency (34 CFR 300.565)(SENMS-CM 5 I.III.E(D)).

G. Fees: The NMSDE permits each participating agency to: 1) charge a fee for copies of records if the fee does not effectively prevent the parents from exercising their rights to inspect and review the records; and 2) not charge a fee to search for or to retrieve information (34 CFR 300.566)(SENMS-CM 5 I.III.E(E)).

H. Amendment of Records at Parent Request: A parent who believes that information in educational records collected, maintained or used is inaccurate or misleading or violates the privacy or other rights of the child, may request from the participating agency which maintains the information to amend the information (34 CFR 300.567)(SENMS-CM 5 I.III.E(F)).

The NMSDE requires that public education agencies decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.568 and SENMS-CM 5 I.III.A.

I. Opportunity for a Hearing: The NMSDE requires that a participating agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to insure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child (34 CFR 300.568)(SENMS-CM 5 I.III.E(G)).

J. Result of Hearing: Results of hearings are implemented as specified in 34 CFR 300.569 and SENMS-CM 5 I.III.E(H). The NMSDE requires that:

1. If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parents in writing.

2. If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

3. Any explanation placed in the records of a child shall be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency. If the records of the child or the contested portion is disclosed by the agency to any party, the explanation also must be disclosed to that party.

K. Hearing Procedures: Hearing procedures are conducted as specified in 34 CFR 300.570. Procedure - A hearing held under 34 CFR 300.568 and SENMS-CM 5 I.III.E must be conducted according to 34 CFR 99.22.

L. Consent: The NMSDE requires that parental consent must be obtained before personally identifiable information is: 1) disclosed or released to anyone other than officials of participating agencies collecting or using the information, unless authorized to do so under 34 CFR Part 99; and 2) used for any purpose other than meeting a requirement of 34 CFR 300.571 and SENMS-CM 5 I.III.E(J).

The NMSDE recommends that the participating agency seek resolution through a resolution conference if parents refuse to grant consent. If unsuccessful, the agency may request a hearing to obtain consent to release confidential information regarding a child with a disability.

M. Safeguards: The NMSDE requires each participating agency to protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. Each agency must designate one official to assume responsibility for insuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under 34 CFR 300.129 and 34 CFR Part 99. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees of the agency who may have access to personally identifiable information (34 CFR 300.572)(SENMS-CM 5 I.III.E(K)).

N. Destruction of Information: The NMSDE requires public education agencies to inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the child. The information shall be destroyed at the request of the parents. However, a permanent record of the child's name, address and phone number, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation. The personally identifiable information about a child may be retained permanently unless the parents request that it be destroyed (34 CFR 300.573)(SENMS-CM 5 I.III.E(L)).

O. Children's Rights: Taking into consideration the age of the child and the severity of disability, children are afforded the rights of privacy similar to those afforded to parents (34 CFR 300.574)(34 CFR Part 99).

P. Enforcement: The NMSDE enforces confidentiality policies and procedures through technical assistance, compliance review and analysis and approval of IDEA applications (34 CFR 300.575).

VII. LEAST RESTRICTIVE ENVIRONMENT

The NMSDE assures that procedures are in effect to insure that the requirements in 34 CFR 300.550-556 are met. The NMSDE shall make arrangements with public and private institutions as may be necessary to effectively implement the concept of the least restrictive environment (34 CFR 300.550-556). The NMSDE shall provide training and technical assistance to inform public agencies and assist in implementation as well as monitor each public education agency to ensure that the least restrictive environment is appropriately implemented.

A. New Mexico has established procedures to assure that:

1. Each public education agency shall establish and implement procedures which meet the requirements of SENMS-CM.

2. Each public education agency shall insure a) that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children without disabilities and b) that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily (SENMS-CM 5.I.III.D(A)).

B. Continuum of Alternative Service Delivery Models:

1. Each public education agency shall insure that a continuum of alternative service delivery models is available to meet the needs of children with disabilities for special education and related services.

2. The continuum required shall a) include the alternative service delivery models listed in the definition of special education including classroom instruction, instruction in physical education, instruction in state supported educational programs, instruction in hospitals and institutions and home instruction and b) make provision for supplementary aids and services to be provided in conjunction with regular classes (SENMS-CM 5.I.III.D(B)).

C. Each public education agency shall insure that:

1. Each child's educational service delivery model a) is determined at least annually, b) is based on his or her IEP and c) is as close as possible to the child's home.

2. These various alternative service delivery models are available to the extent necessary to implement the IEP for each child with a disability.

3. Unless the IEP requires some other arrangement, the child is educated in the school which he or she would attend if he or she did not have a disability.

4. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

5. Delivery of services decisions must be made on an individual basis.

6. Each public education agency must have various alternative service delivery models available in order to insure that each child with a disability receives an education which is appropriate to his or her individual needs.

7. Each child's delivery of services model is in the least restrictive environment in which the unique needs of the child can be met, based upon the child's IEP, and meets all of the other requirements of SENMS-CM.

8. Delivery of services requirements apply to all preschool children with disabilities who are entitled to receive a free appropriate public education. Public education agencies that provide preschool programs for children without disabilities must insure that the least restrictive environment requirements are met. Public agencies that do not operate programs for preschool children without disabilities are not required to initiate such programs solely to satisfy the requirements regarding delivery of services in the least restrictive environment (SENMS-CM 5.I.III.D(C)).

D. Nonacademic Settings

1. In providing or arranging for the provision of nonacademic and extra-curricular services and activities, including meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups, clubs sponsored by the public education agency, referrals to agencies which provide assistance to individuals with disabilities, and employment of children with disabilities including both employment by the public education agency and assistance in making outside employment available, each public education agency shall insure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to meet the needs of that child.

2. Children with disabilities also must be provided nonacademic services in as integrated a setting as possible. To the maximum extent appropriate, children in residential settings also are to be provided opportunities for participation with children without disabilities (SENMS-CM I.III.D(D), SENMS-CM 5.I.IV.A(F)).

The NMSDE shall carry out activities to insure that administrators and service providers in all public agencies are informed of their responsibilities in the implementation of the Least Restrictive Environment requirements through the dissemination of SENMS-CM and the provision of technical assistance. The NMSDE carries out activities to ensure implementation of Least Restrictive Environment requirements. These activities include annual monitoring activities through the NMSDE accreditation process and facilitation activities for the development of public education agency long range plans which include special education. If there is evidence that a public education agency delivers special education services in a manner inconsistent with these requirements, the NMSDE shall review the public education agency's justification for its actions and assist in developing long range planning goals to implement any necessary corrective action. The NMSDE annually obtains information on the number and category of children with disabilities who reside in New Mexico and who participate in general education programs, separate classes, separate school facilities, or who are otherwise removed from the general educational environment. The NMSDE annually submits this Child Count Report to the Office of Special Education Programs and the report is available to interested parties upon request.

VIII. PROTECTION IN EVALUATION PROCEDURES

A. The NMSDE insures that each public education agency establishes and implements procedures so that testing and evaluation materials and procedures used for the purposes of evaluation and determination of services for children with disabilities are selected and administered so as not to be racially or culturally discriminatory (34 CFR 300.530).

B. Prior to the initial delivery of services to a child with a disability in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with criteria for evaluation procedures and service delivery procedures (CFR 300.531-533). A reevaluation of the child's educational needs shall be conducted at least every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation (34 CFR 300.531-534).

C. In evaluating a child suspected of having a specific learning disability, each public education agency also shall meet the requirements of 34 CFR 300.540-543.

D. The NMSDE has established policies (SENMS-CM 5 I.III.B) to assure that testing and evaluation procedures are appropriate and meet the requirements of IDEA.

1. Referral for Multidisciplinary Evaluation: Whether from general screening or from direct referrals, local education agencies shall maintain a record of the receipt, processing, and disposition of referrals for multidisciplinary evaluation. Prior to the referral for multidisciplinary evaluation, the public education agency also shall document the implementation of prereferral intervention strategies (SENMS-CM 5 I.III.B(A)).

2. Initial Multidisciplinary Evaluation: Before any action is taken with respect to the initial delivery of services of a child with a disability, a full and individual multidisciplinary evaluation of the child's educational needs must be conducted at no cost to the parents (SENMS-CM 5 I.III.B(B)).

3. Evaluation Procedures

a. Testing and evaluation materials and procedures used for the purposes of evaluation and delivery of services to children with disabilities must be selected and administered so as not to be racially or culturally discriminatory. At a minimum, tests and other evaluation materials a) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so, b) have been validated for the specific purpose for which they are used and c) are administered by trained personnel, such as a school psychologist, educational diagnostician, speech-language pathologist, classroom teacher, program specialist or remedial reading teacher, in conformance with the instructions provided by their producers.

b. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single intelligence quotient.

c. Tests are selected and administered so that the test results accurately reflect the child's aptitude or achievement level or whatever factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purpose is to measure).

d. No single procedure is used as the sole criterion for determining an appropriate educational program for a child. Additional factors influence the choice of a specific evaluation procedure, including the child's age, severity and nature of disability, progress in school and availability of data from many sources (e.g. school and home). Sources of information that must be considered in an evaluation include, but are not limited to, review of records, interviews, observations, curriculum-based measures, rating scales, and psychoeducational tests. Some areas of evaluation may require procedures from several of these data sources.

e. The evaluation is made by a multidisciplinary team or group of persons, including family members, at least one teacher and a qualified specialist in the area(s) of suspected disability.

f. The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor skills.

g. Children who have a speech-language impairment as their primary disability may not need a complete battery of assessments (e.g. psychological, physical or adaptive behavior). However, a qualified speech-language pathologist would a) evaluate each child with a speech-language impairment using procedures that are appropriate for the assessment and evaluation of children with speech-language impairment and b) where necessary, make referrals for additional assessments needed to make an appropriate delivery of services decision.

h. An observation process must be included within the evaluation process which insure that a) at least one team member other than the child's general education teacher shall observe the child's academic performance in the general education classroom setting and b) in the cases of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

i. All appropriate evaluation data, inclusive of summary reports from all individuals evaluating the child, is reported in writing for presentation to the IEP team.

j. Evaluation procedures shall be completed in a timely manner (SENMS-CM 5 I.III.B(C)).

E. Delivery of Services Procedures

1. In interpreting evaluation data and in making delivery of services decisions, each public education agency

must a) draw upon information from a variety of sources, including but not limited to aptitude and achievement tests, teacher recommendations, parent information, physical condition, social, linguistic or cultural background, and adaptive behavior, b) insure that information obtained from all these sources is documented and carefully considered, c) insure that the delivery of services decision is made by a multidisciplinary group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the delivery of services options, d) insure that more than one source is used in interpreting evaluation data and in making delivery of services decisions and e) insure that the delivery of services decision is made in conformity with the least restrictive environment rules.

2. If a determination is made that a child has a disability and is in need of special education and related services, an IEP must be developed for the child and implemented according to the provisions identified in the IEP (SENMS-CM 5 I.III.B(D)).

F. Reevaluation Procedures

1. Each public education agency shall insure a) that each IEP for a child with a disability is reviewed at least annually and b) that an reevaluation of the child is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests a reevaluation.

2. A flexible approach to three-year reevaluations based on the unique needs of the child and the specific questions that need to be answered is required. Reevaluations must be meaningful, individualized, multifaceted and serve the best interests of children.

3. Factors that must be considered in conducting and in shaping the nature of reevaluations include a) the purposes and specific questions for reevaluation that guide the selection of evaluation methods and (b) the three broad purposes of reevaluation that are (i) evaluating the effectiveness of the child's IEP, (ii) evaluating the appropriateness of the child's current interventions and determining his/her future needs and (iii) determining whether the child continues to be in need of special education services.

4. Additional factors influence the choice of a specific reevaluation procedure, including the child's age, severity and nature of disability, progress in school, years receiving special education services, availability of data from many sources (e.g. school and home) and the consistency of the results of previous evaluations.

5. Sources of information that must be considered in a reevaluation include, but are not limited to, review of records, interviews, observations, curriculum-based measures, rating scales, vocational assessments, medical assessments and psychoeducational tests. Reevaluation may require procedures from several of these data sources (SENMS-CM 5 I.III.B(E)).

Additional Procedures for Evaluating Children With Specific Learning Disabilities

A. Additional Team Members: In evaluating a child with a specific learning disability, each public education agency shall include on the multidisciplinary team: 1) a) the child's regular teacher or b) if the child does not have a regular teacher, a general education teacher qualified to teach a child of his or her age or c) for a child of less than school age, a person qualified by the NMSDE to teach a child of his or her age; and 2) at least one person qualified to conduct child evaluations, such as a school psychologist, educational diagnostician, speech-language pathologist, classroom teacher, program specialist or remedial reading teacher (SENMS-CM 5.I.III.C(A)).

B. Criteria for Determining the Existence of a Specific Learning Disability

1. A team may determine that a child has a specific learning disability if a) the child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in this section when provided with learning experiences appropriate for the child's age and ability levels and b) the team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: (i) oral expression; (ii) listening comprehension; (iii) written expression; (iv) basic reading skills; (v) reading comprehension;

(vi) mathematics calculation; or (vii) reasoning.

2. The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of a) a visual, hearing or motor disability, b) intellectual disability, c) emotional disturbance or d) environmental, cultural or economic factors (SENMS-CM 5 I.III.C(B)).

C. Observation

1. At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

2. In the case of a child out of school, a team member shall observe the child in an environment appropriate for a child of that age (SENMS-CM 5 I.III.C(C)).

D. Written Report

1. The team shall prepare a written report of the results of the evaluation.

2. The report must include a statement of a) whether the child has a specific learning disability, b) the basis for making the determination, c) the relevant behavior noted during the evaluation of the child, d) the relationship of that behavior to the child's academic functioning, e) the educationally relevant medical findings, if any, f) whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services and g) the determination of the team concerning the effects of environmental, cultural or economic factors.

3. Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusion (SENMS-CM 5 I.III.C(D)).

IX. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD)

The NMSDE has developed and implemented a comprehensive system of personnel development that: 1) is consistent with the purposes of IDEA Part B and with the comprehensive system of personnel development of IDEA Part H described in 34 CFR 303.360; 2) meets the requirements in 34 CFR 300.381-383; and 3) is consistent with the provisions on personnel standards in 34 CFR 300.153. Included in this State Plan is a description of the personnel development system required in 34 CFR 300.380.

Adequate Supply of Qualified Personnel: The New Mexico State Plan includes a description of the procedures and activities the state will undertake to insure an adequate supply of qualified personnel as the term "qualified" is defined at 34 CFR 300.15, including special education and related services personnel and leadership personnel necessary to carry out the purposes of IDEA Part B. The procedures and activities include the development, updating and implementation of a plan that a) addresses current and projected special education and related services personnel needs, including the need for leadership personnel and b) coordinates and facilitates efforts among the NMSDE, public education agencies, institutions of higher education and professional associations to recruit, prepare and retain qualified personnel including personnel from minority backgrounds and personnel with disabilities.

Personnel Preparation and Continuing Education: The New Mexico State Plan includes a description of the procedures and activities the state will undertake to insure that all personnel necessary to carry out IDEA Part B are appropriately and adequately prepared. The procedures include a) a system for the continuing education of general education, special education and related services personnel to enable these personnel to meet the needs of children with disabilities, b) procedures for acquiring and disseminating to teachers, administrators and related services personnel significant knowledge derived from education research and other sources and c) procedures for adopting, if appropriate, promising practices, materials and technology proven effective through research and demonstration.

A. The NMSDE solicits input and collects data from individuals, organizations and agencies to update statewide CSPD priorities through the following processes:

1. The NMSDE appointed a State Special Education Long Range Task Force comprised of approximately sixty individuals. The disciplines represented on the Task Force were as follows: parents of children with disabilities; legislators; protection and advocacy representatives; representatives from the Council for Exceptional Children, Council of Administrators for Special Education, Association for Retarded Citizens, institutions of higher education and state supported educational programs; public education agency superintendents, principals, special education directors, general and special education teachers and related services personnel; regional center cooperative directors; statewide preschool and infant evaluation representatives; Division of Vocational Rehabilitation; Department of Health; and NMSDE staff. The Task Force identified eight broad areas of need identified as: 1) Improve Integration in Schools; 2) Resolve Knowledge/Experience/Commitment Deficiencies; 3) Improve Support for Instructional Personnel; 4) Improve Education of the Culturally Different Child; 5) Improve Parent Involvement in Schools; 6) Improve Interagency Collaboration; 7) Improve Certain Programs/Services in School Districts; and 8) Improve the Leadership Role of the State Education Agency. The Task Force provided statewide information to the NMSDE on the following issues related to CSPD:

a. the training of instructional, related and support personnel to meet the full-service commitment;
b. the provision of additional training to those currently engaged in providing special education and related services to increase ability to meet student needs;
c. technical assistance and information sharing which is systematized and made more readily available to teachers and administrators serving children with disabilities; and
d. systematic review and identification of resources at the state, regional and local levels.

This statewide information is utilized as public education agencies and regional center cooperatives develop local and regional long range plans for their agencies to address the personnel needs.

2. Institutions of higher education design personnel preparation programs which meet competency requirements established by the NMSDE. Institutions of higher education provide programs for all personnel and cooperatively design and implement inservice activities based on state and local training needs.

3. Public education agencies through annual needs assessment, determine specific content area needs, such as IEP development, nondiscriminatory testing, procedural safeguards and least restrictive environment. Local needs assessment determines the target groups requiring training, retraining and the type of training needed. This information is gathered annually for single and consolidated IDEA Applications. The information is monitored through application analysis, review and approval as well as during onsite accreditation review conducted by the NMSDE and including staff from the Special Education Office. Public education agencies are required to include an evaluation process of the training objectives through pre-post evaluations, surveys and/or rating scales. Public education agency long range planning also addresses staff training needs.

4. The NMSDE Special Education Office involves parent and advocacy organizations in the development of workshops addressing all priority areas identified by the State Special Education Long Range Planning Task Force. All agencies and organizations work in conjunction with the NMSDE Special Education Office to develop and refine anticipated inservice areas for general and special education teachers, parents, administrators, related service personnel and paraprofessionals.

B. Personnel preservice and inservice is planned and implemented based on local and statewide needs identified through annual needs assessment processes. Cooperative planning for personnel preservice and inservice training is facilitated by and among parents, institutions of higher education, public education agencies, regional center cooperatives, state supported educational programs and the NMSDE.

C. Professional standards are determined by the New Mexico State Board of Education with recommendation from the Professional Standards Commission and comment from the IDEA State Advisory Panel. The NMSDE Special Education Office coordinates, supervises and assures the implementation of state-wide personnel development activities, facilitates local and regional long range planning to address personnel needs, collects state-wide needs assessment data, advises institutions of higher education on personnel training needs and provides appropriate inservice training.

1. New Mexico State Board of Education: Public School Code, Section 22-2-2(G), NMSA As Amended, requires the New Mexico State Board of Education to determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools according to law and according to a system of classification adopted and published by the New Mexico State Board; Section 22-10-3 NMSA 1978, As Amended, establishes certificate requirements and exceptions. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school shall hold a valid certificate authorizing the person to perform that function. All certificates issued by the New Mexico State Board of Education shall be standard certificates except that the New Mexico State Board of Education may issue substandard and substitute certificates under certain circumstances. If a local school board or the governing authority of a state agency certifies to the New Mexico State Board of Education that an emergency exists in the hiring of a qualified person, the New Mexico State Board of Education may issue a substandard certificate to a person not meeting the requirements for a standard certificate....All substandard and substitute certificates issued shall be effective for only one school year....Renewal of one year certificates requires evidence of continued progress towards a standard certificate (license).

2. The Professional Standards Commission is appointed by the New Mexico State Board of Education to make recommendations regarding changes or maintenance of professional licensure/certification standards.

3. The IDEA State Advisory Panel comments publicly on the adequacy of such standards to ensure that personnel necessary to carry out the purpose of IDEA are appropriately and adequately prepared and trained.

4. Professional Licensure Boards: Occupational Licensure Boards are established for control of private practice in the following related service/professional areas: Board of Psychological Examiners; Speech-Language Pathology, Audiology Board; Occupational Therapy Board; and Physical Therapy Board. Associations certify the following related service/professional areas: American Association of the Workers for the Blind (Association for Education and Rehabilitation of the Blind and Visually Impaired) for orientation mobility instructors; and National Registry of Interpreters for the Deaf.

The New Mexico State Board of Education licensure standards are consistent with any other recognized certification, licensing, registration or other comparable requirements in the state which apply to a professional or discipline specific area in which an employee is to provide special education or related services.

D. The NMSDE will continue to enter into agreements with public education agencies, institutions of higher education and parent and advocacy organizations to carry out: 1) experimental or innovative personnel development programs; 2) development of instructional materials; 3) development of technical assistance materials; and 4) dissemination of significant information derived from NMSDE state grant activities, agreements, educational research and demonstration projects.

E. The NMSDE insures that ongoing inservice training programs are available to all personnel who are engaged in the education of children with disabilities and that these programs include: 1) the use of incentives which insure participation by teachers; 2) the involvement of local staff; and 3) the use of innovative practices which have been found to be effective.

PRIMARY RESPONSIBILITIES FOR PERSONNEL DEVELOPMENT

State Education Agency

Requires the planning and development of inservice programs based on needs assessments conducted by public education agencies and regional center cooperatives.

Correlates and identifies training needs targeted by regulation education.

Identifies qualified professionals who are available on a full or part-time basis to deliver inservice training.

Organizes and disseminates information about the trainers according to their training expertise, content and exceptionality areas.

Provides leadership and enrichment through inservice activities to trainers.

Promotes a broader concept of inservice training ranging from short term to long term activities.

Assures that the local agencies develop incentives to encourage participation in inservice training.

Assists public education agencies and regional center cooperatives in recruitment of appropriately licensed personnel.

Public Education Agencies

Assist the State in identifying qualified professionals to deliver inservice training.

Conduct local needs assessments to determine critical inservice needs for parents, staff, volunteers, etc.

Provide the State with information about critical training needs.

Assure that inservice programs address the psychological needs of appropriate age groups.

Encourage regular educators to participate in the development and implementation of inservices.

Develop a variety of incentives to encourage participation in inservice training according to the professional needs of the audience.

Provide incentives to attract appropriately certified special education and ancillary personnel and encourage local staff to become certified in special education areas.

Institutions of Higher Education

Provide for and conduct preservice and inservice training for special education personnel preparation and assist individuals in meeting competencies required by NMSDE.

Develop a system to increase/ improve communication between training institutions and special education directors to assure appropriate training experiences, particularly through cooperative supervision of field experiences.

Provide a system for recruiting personnel from public education agencies and regional center cooperatives into special education training programs.

F. Inservice training needs of personnel engaged in the education of children with disabilities are determined through the annual needs assessment process. Data are collected from: 1) NMSDE accreditation activities and compliance reviews of public education agencies; 2) public education agency long range plans; 3) formal complaints and impartial due process hearings; 4) assessments completed by other agencies and organizations; and 5) annual data reports.

G. Vacancy and recruitment data, annual state-wide needs assessments and input from the IDEA State Advisory Panel provide the NMSDE Special Education Office with a framework of cooperative planning for personnel preparation which addresses ongoing needs: 1) to assure that coursework at all training institutions reflects the current requirements and procedures set forth in IDEA and the New Mexico State Statutes; 2) to assure quality preparation for prospective personnel who will provide services to children with disabilities; 3) to identify and respond to the needs of special education and other personnel providing services to children with disabilities at the state and local level; and 4) to provide input into the planning of personnel preparation programs and state licensing requirements.

H. The NMSDE currently is implementing a Federal Part D personnel preparation training grant in collaboration with New Mexico Parents Reaching Out and the five New Mexico public Institutions of Higher Education: Eastern New Mexico University, New Mexico Highlands University, New Mexico State University, University of New Mexico and Western New Mexico University. The training grant, "New Mexico Interagency Collaboration Model To Prepare Special Education Personnel", provides financial assistance to undergraduates, graduates and paraprofessionals to continue their education and to attain full certification or licensure as a paraprofessional or special education professional. The goal of this CSPD activity is to increase the number of certified special education personnel in the State of New Mexico. The NMSDE has submitted a new Part D personnel preparation training grant proposal for financial assistance over the next five years.

I. A collaborative distance education project involving the NMSDE, the University of New Mexico and the ten state regional center cooperatives provides graduate coursework through distance education technology to rural teachers with substandard licenses who teach predominantly Hispanic and Native American students. The project goal is to reduce the number of substandard licenses among rural teachers and promote the retention of those teachers in the rural areas of the state.

J. Dissemination of significant information from education research and other sources includes: 1) increasing awareness of the information and practices by personnel, administrators, agencies and organizations; 2) providing training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and 3) using instructional materials and other media for personnel development and instructional programming.

The NMSDE supports numerous acquisition, review and dissemination activities:

- A statewide computerized telecommunications network is operational;
- Priority areas for acquiring significant information and promising practices are determined through annual needs assessment;
- Information is acquired through specific NMSDE activities. Accreditation, evaluation and analysis of public education agency policy and procedures are used to obtain "promising practices". Requests for proposals are annually disseminated for NMSDE supported discretionary projects under IDEA;
- Additional searches for information are conducted through the South Atlantic Regional Resource Center, National Association of State Directors of Special Education, professional journals, institutions of higher education, state agencies and organizations;
- NMSDE special education staff and statewide advisory committees review and analyze information relevant to objectives of each particular project which includes monitoring, IDEA competitive grants and best practices;
- Active participation of NMSDE special education staff in professional organizations such as the Council for Exceptional Children, The Association for Persons with Severe Handicaps, the National Association of State Directors of Special Education and the American Speech-Language-Hearing Association contribute to the dissemination and adoption of information and materials;
- The NMSDE Special Education Office provides and disseminates state-wide, a national news magazine

dedicated to the promotion of education for all children;
-The development of special projects through competitive subgrants addresses significant service delivery needs through product development, dissemination and training.

The NMSDE Special Education Office documents dissemination of activities through the following:

1. Correspondence: Correspondence is received from and disseminated to public education agencies and regional center cooperatives, professional organizations and parents who request information.

2. NMSDE Letters of Interpretation: Letters of interpretation represent regulatory interpretations that may have programmatic impact.

3. Best Practices/Technical Assistance Documents: Products, materials and procedures are developed for implementation and inservice training.

-Attention Deficit Disorder Practices Manual
-Consolidating Initiatives for Tomorrow's Education: A Student Centered Policy Framework for System-wide Educational Change in New Mexico
-Extended School Year Services Technical Assistance Manual
-Guidelines Addressing: Parent Rights, Required Notices, Individualized Education Program, Least Restrictive Environment and Full Inclusion
-Integrated Services Approach to the Provision of Education and Related Services Best Practices Document
-Procedures for Language Assessment
-Public Education Agency Policies, Procedures and Assurances Technical Assistance Document
-NMSDE School Renewal Update
-Success for All Students: Standards for Excellence in New Mexico's Schools
-The New Mexico Accountability Report
-The New Mexico Dropout Study
-Vistas sin Limites: Recommendations to Improve the Quality of Special Education Programs in New Mexico

4. Standards Interpretations and Clarifications: Questions and answers regarding Special Education Standards are disseminated through the NMSDE.

5. Workshops, Conferences: The NMSDE Special Education Office conducts Quarterly Meetings involving public education agency administrators, regional center cooperative directors, institutions of higher education faculty, parents of children with disabilities and others to share information necessary for program implementation. The NMSDE sponsors statewide technical assistance workshops annually in collaboration with the South Atlantic Regional Resource Center and New Mexico Parents Reaching Out.

6. Accreditation: The NMSDE special education staff provide technical assistance related to special education policies and procedures.

7. Vacancy Announcements: New Mexico personnel needs information is disseminated statewide and nationally through an annual vacancy announcement document, "A Guide for Personnel in Special Education, Indian Education, Bilingual and Multicultural Education". Advertisements in Counterpoint provide national awareness that special education personnel are needed in New Mexico.

The NMSDE utilizes resources from projects of national significance: SpecialNet, Counterpoint, Cooperative Manpower Study (University of Missouri) and the South Atlantic Regional Resource Center. Products and information are disseminated directly to personnel within private and public education agencies including public education agencies, regional center cooperatives and parents of children with disabilities.

IDEA discretionary funds are available through a statewide competition for subgrants. These subgrants are awarded to public education agencies, regional center cooperatives and nonprofit organizations to provide technical assistance in prioritized areas identified through the annual needs assessments and Vistas sin Limites. IDEA discretionary funds also are utilized to support personnel development activities for professionals and parents in the state through Professional Services Contracts and Joint Powers Agreements.

Data System on Personnel and Personnel Development: The NMSDE provides procedures for the development and maintenance of a system for determining on an annual basis the data required in 34 CFR 300.383. Data must enable the State to determine on an annual basis: 1) the number and type of personnel including leadership personnel employed in the provision of special education and related services by profession or discipline; 2) the number and type of personnel who are employed with emergency, provisional or temporary certification in each profession or discipline who do not hold appropriate state certification, licensure or other credentials comparable to certification or licensure for that profession or discipline; and 3) the number and type of personnel including leadership personnel in each profession or discipline needed in five years based on projections of individuals to be served, retirement and other departures of personnel from the field and other relevant factors.

Data on special education and related services personnel must include audiologists, counselors, diagnostic and evaluative personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, educational assistants, recreation and therapeutic recreation specialists, vocational education teachers, work-study coordinators and other instructional and noninstructional staff. Data on leadership personnel must include administrators and supervisors of public education agencies who are involved in the supervision of services or activities necessary to meet the purposes of IDEA Part B.

Data must enable the State to determine on an annual basis the institutions of higher education in the state that are preparing special education and related services personnel including leadership personnel by area of specialization including: 1) the numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and 2) the numbers of students who graduated during the past year with certification or licensure from programs for the preparation of special education and related services personnel administered by institutions of higher education.

A. The NMSDE conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the state. These personnel include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments and deafness, occupational therapists, physical education teachers, physical therapists, school psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aids, recreation and therapeutic recreation therapists, vocational education teachers, work-study coordinators, and other instructional and noninstructional staff as well as leadership personnel including administrators and supervisors involved in the provision or supervision of services or activities necessary to meet the requirements of 34 CFR 300.383. A data collection system including personnel reports, program approval reports and child count of public education agencies, provides a vehicle for collection of data which identifies and anticipates personnel demand;

B. Recruitment of New Personnel: Annually public education agencies and regional center cooperatives are required to list the number and type of all special education personnel including leadership personnel hired during the year and anticipated vacancies for the subsequent school year. Projections must be included of those personnel that will be needed in five years based on projections of individuals to be served, retirement and other departures of personnel from the field and other relevant factors.

C. All five New Mexico public institutions of higher education are preparing special education and related services personnel including leadership personnel. Information is available to the NMSDE regarding numbers of students enrolled in programs for the preparation of special education and related services personnel and areas of specialization. Further information is available to the NMSDE regarding the numbers of students who graduated during the past year with certification or licensure or with credentials to qualify for certification or licensure from each program for the preparation of special education and related services personnel administered by each institution of higher education.

X. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES

The NMSDE assures that each public education agency shall provide special education and related services designed to meet the needs of the private school students with disabilities residing in the jurisdiction of the agency.

The NMSDE insures that, to the extent consistent with their number and location in the state, provision is made for the participation of private school children with disabilities in the program assisted or carried out under IDEA Part B by providing them with special education and related services and the other requirements in 34 CFR 76.651 through 76.662.

A. Public education agencies must provide children with disabilities enrolled in private schools with a genuine opportunity for equitable participation consistent with the number of eligible private school students and their needs (34 CFR 76.651). During all phases of the development and design of and decisions for an application for funds under IDEA, public agencies shall consult with appropriate representatives of children enrolled in nonpublic schools and provide them with an opportunity to express their views regarding which children will receive benefits under the project, how the children's needs will be identified, what benefits will be provided; how the benefits will be provided and how the project will be evaluated (34 CFR 76.652).

B. The public education agency is required to determine, on a basis comparable to that used for the participation of public school students, the needs of children enrolled in nonpublic schools, the number of those children who will participate in a project and the benefits that the public education agency will provide under the program to those children (34 CFR 76.653). The program benefits provided to nonpublic school children must be comparable in quality, scope and opportunity for participation to the program benefits provided children with in the public schools. If a public education agency uses funds under a program for public school children in a particular attendance area, or grade or age level, the public education agency shall insure equitable opportunities for participation by children enrolled in private schools who: 1) have the same needs as the public school children to be served; and 2) are in that group, attendance area, or age or grade level. If the needs of the children enrolled in nonpublic schools are different from the needs of children in public schools, the public education agency shall provide program benefits for the nonpublic school children that are different from the benefits the agency provides for public school children (34 CFR 76.654). Public agencies must expend the same average amount of funds for both nonpublic and public school children but shall spend different amounts if the needs are different between the public and nonpublic school children (34 CFR 76.655). IDEA funds may not be used to finance the existing level of instruction in a nonpublic school or otherwise benefit the nonpublic schools (34 CFR 76.658). Public education agencies must meet federal regulations for required information on nonpublic school students in their local application for IDEA funds as to use of public and nonpublic school personnel, equipment and materials and construction (34 CFR 76.656-662).

C. The NMSDE and its subgrantees will implement procedures necessary to provide for the participation of children with disabilities, as defined in the State Plan, enrolled in private schools in programs funded under IDEA Part B. Such provisions will be made to the extent consistent with the number and location of such children and in accordance with their individual special education and related service needs. The term "subgrantee" applies to public education agencies including local education agencies, local education agencies participating in regional center cooperatives and state supported educational programs receiving IDEA funds according to the IDEA State Plan.

D. The NMSDE insures the following items and procedures:

1. Each subgrantee that receives IDEA funds shall a) provide children with disabilities enrolled in private schools with a genuine opportunity for equitable participation in the special education and related services provided with IDEA funds in a manner that is consistent with the number and location of such children and their needs, b) maintain continuing administrative direction and control over the IDEA funds, services and property that are provided to benefit children enrolled in private schools and c) comply with the requirements relating to this section in the Education Department General Administrative Regulations (EDGAR) (76.651-662).

2. The NMSDE carries out an IDEA project directly, it shall comply with these requirements as if it were a subgrantee.

3. An applicant for a subgrant shall consult with appropriate representatives of children enrolled in private schools during all phases of the development and design of the project covered by the IDEA application including consideration of a) which children with disabilities will receive benefits under the project (see Section IV), b) how the children's needs will be identified, c) what benefits will be provided, d) how the benefits will be provided and e) how the project will be evaluated. Monitoring of this requirement is conducted by the NMSDE through review of documentation, onsite compliance review and approval of the IDEA application.

4. A subgrantee shall consult with appropriate representatives of children enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those children with disabilities to participate in the project.

5. A subgrantee shall give the appropriate representatives of children with disabilities enrolled in private schools a genuine opportunity to express their views regarding each matter subject to the consultation requirements described in items (3) and (4) of this section.

6. A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for children enrolled in public schools a) the needs of children enrolled in private schools, b) the number of those children who will participate in a project and c) the benefits that the subgrantee will provide under the IDEA program for those children.

7. The program benefits that a subgrantee provides from IDEA funds for children enrolled in a private school shall be comparable in quality, scope and opportunity for participation to the program benefits that the subgrantee provides with IDEA funds for children enrolled in public schools.

8. If a subgrantee uses IDEA funds under a program for public school children in a particular attendance area, grade level or age level, the subgrantee shall ensure equitable opportunities for participation by children enrolled in private schools who a) have the same needs as public school children to be served and b) are in that group attendance area, grade level or age level.

9. If the needs of children enrolled in private schools are different from the needs of children enrolled in public schools, a subgrantee shall provide program benefits for the private school children that are different from the benefits the subgrantee provides for the public school children.

10. Subject to item (11) of this section, a subgrantee shall spend the same average amount of IDEA funds on a) a child enrolled in a private school who receives benefits under the program and b) a child enrolled in a public school who receives benefits under the program.

11. A subgrantee shall spend a different average amount of IDEA funds on program benefits for children enrolled in private schools if the average cost of meeting the needs of those children is different from the average cost of meeting the needs of children enrolled in public schools.

12. An applicant for a subgrant shall include the following information in its application: a) a description of how the applicant will meet the federal requirements for the participation of children with disabilities enrolled in private schools, b) the number of children with disabilities enrolled in private schools who have been identified as eligible to receive benefits under the IDEA program, c) the number of children with disabilities enrolled in private schools who will receive benefits under the program, d) the basis the applicant used to select the children with disabilities, e) the manner and extent to which the applicant complied with the consultation requirements described in this section (see b(3)), f) the places and times that the private school children with disabilities will receive benefits under the program and g) the differences, if any, between the program benefits the applicant will provide to public and private school children with disabilities and the reasons for the differences.

13. A subgrantee may not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if a) the classes are at the same site and b) the classes include children enrolled in public schools and children enrolled in private schools.

14. A subgrantee may not use IDEA funds to finance the existing level of instruction in private school or to otherwise benefit the private school.

15. A subgrantee shall use IDEA funds to meet specific needs of children enrolled in private schools rather than a) the needs of private school or b) the general needs of the children enrolled in private school.

16. A subgrantee may use IDEA funds to make public personnel available in other than public facilities a) to the extent necessary to provide equitable program benefits designed for the children enrolled in the private school and b) if those benefits are not normally provided by the private school.

17. A subgrantee may use IDEA funds to pay for the services of an employee of a private school if a) the employee performs the services outside of regular duty hours and b) the employee performs the services under public supervision and control.

18. A subgrantee shall keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with IDEA funds.

19. A subgrantee may place equipment and supplies in a private school for the period of time needed for the IDEA project.

20. A subgrantee shall ensure that the equipment or supplies obtained with IDEA funds and placed in a private school a) are used only for the purposes of the project and b) can be removed from the private school without remodeling the private school facilities.

21. A subgrantee shall remove equipment and supplies obtained with IDEA funds from a private school if a) the equipment and supplies are no longer needed for the purposes of the IDEA project or b) removal is necessary to avoid use of the equipment or supplies for other than IDEA project purposes.

22. A subgrantee shall ensure that IDEA funds are not used for the construction of private school facilities.

23. A subgrantee shall ensure compliance with the requirements of this section in submitting an application for a subgrant.

24. Compliance review conducted by the professional staff of the NMSDE shall be appropriately structured to address the requirements of this section and to secure compliance with these requirements by each subgrantee.

XI. PLACEMENT IN PRIVATE SCHOOLS

The NMSDE insures that a child with a disability who is placed in or referred to a private school or facility by a public education agency is provided special education and related services in conformance with an IEP which meets the requirements under 34 CFR 300.340 through 300.349 at no cost to the parents and at a school or facility that meets the standards that apply to state and public education agencies including the requirements of Part B; and has all of the rights of a child with a disability who is served by a public education agency. The NMSDE shall review compliance, disseminate copies of applicable standards to each private school and facility to which a public education agency has referred or placed a child with a disability and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards which apply to them (34 CFR 300.401-402).

If a child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public education agency is not required to pay for the child's education at the private school or facility. However, the public education agency shall make services available to the child as provided under 34 CFR 300.450 through 300.460. Disagreements between a parent and a public education agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under 34 CFR 300.500 through 300.514.

A. For the purpose of placement for educational services, the term "private school" refers to those agencies and organizations that are nonprofit, nonsectarian, educational training centers as defined by State Statutes and approved by the State Superintendent of Public Instruction to serve children with disabilities by contract with public education agencies; Section 22-13-8, NMSA 1978 states, "the responsibility of school districts, institutions, and the state to provide a free public education for exceptional children is not diminished by the availability of private schools and services. Whenever such schools or services are utilized, it continues to be a state responsibility to assure that all exceptional children receive the education to which the laws of the state entitle them". Private school children with disabilities means children enrolled in private schools or facilities other than children covered under 34 CFR 300.400-402.

B. The following procedures are undertaken in implementing the placement in private schools by the NMSDE or public education agencies as a means of carrying out the statutory and regulatory requirements of the State Board of Education:

1. Whenever children with disabilities are placed in private schools or facilities by the public education agency, those children are provided free appropriate special education and related services. The special and related educational services are a) in conformance with a IEP, b) at no expense to parents and c) in a school or facility that meets NMSDE Standards.

2. If a child with a disability is provided a free appropriate public education by or through the public education agency and the parents choose to place the child in a private school or facility, the public education agency is not required to pay for the child's education at the private school or facility.

3. Matters of disagreement between parents and public education agencies regarding the availability of a program appropriate for a child with a disability and the question of financial responsibility are subject to due process procedures.

4. The NMSDE assures that a child placed in a private school or facility by a public education agency shall have all the rights s/he would have if educated in a public school setting in accordance with SENMS-CM.

5. The NMSDE makes available copies of SENMS-CM to all private schools and facilities contracting with public education agencies to carry out public programs. New Mexico Statute requires that private schools meet NMSDE standards. NMSDE technical assistance is be available upon request or upon identification of a noncompliance issue.

6. All private school personnel from New Mexico State Board of Education accredited, nonprofit nonsectarian schools are provided an opportunity to participate in the revision of SENMS-CM by the NMSDE.

7. The appropriate public education agency responsible for providing special education and related services for a child with a disability retains financial responsibility when placement of a child in a private school or facility is recommended by the IEP Team.

XII. RECOVERY OF FUNDS FOR MISCLASSIFIED CHILDREN

The NMSDE insures that it will seek to recover any funds provided under Part B of IDEA for services to a child who has been determined to be erroneously classified as eligible to be counted for IDEA funds (34 CFR 300.141).

A. The NMSDE will seek to recover funds for children who have been erroneously classified as eligible for special education services. The authority of the State Superintendent of Public Instruction in this area is provided in two state statutes:

1. "Whenever, under any act of Congress of the United States, federal aid to education is made available to the states: the Superintendent of Public Instruction shall...provide for and install an adequate system of auditing for the expenditure of funds to be received through the provisions of any such act of Congress and shall be apportioned to local school jurisdictions..."(Section 22-9-9A(2) NMSA 1978; and

2. "Said Superintendent shall provide and require such accounting, budgeting and other fiscal methods and procedures as are necessary for the proper and efficient administration of such federal plan or plans." (Section 22-9-15 NMSA 1978).

B. If during scheduled public education agency accreditation visits by the NMSDE, through formal complaints or as a result of NMSDE audits, problems arise regarding child classification, the NMSDE will provide technical assistance to aid in correcting the problem. NMSDE compliance teams will verify the comprehensive evaluation of children with disabilities and their actual services to insure that the children are appropriately identified and receiving services in accordance with IDEA and SENMS-CM. The NMSDE will adjust a public education agency's prior or current fiscal year funding to reflect changes due to a failure to comply with applicable statutes, regulations and requirements.

XIII. HEARING ON PUBLIC EDUCATION AGENCY APPLICATION

The NMSDE insures that no final action is taken with respect to an application submitted by a public education agency before giving the agency reasonable notice and an opportunity for a hearing (34 CFR 76.401).

A. Before taking any final action with respect to disapproval of or failure to approve an application or project in whole or in part, the NMSDE shall provide the applicant with notice and the opportunity for a hearing.

1. Notice of Intended Action: A Notice of Intended Action from the State Superintendent of Public Instruction will be sent to the applicant. This Notice will describe the problems, cite the applicable State or Federal Law, standards and guidelines and enclose the description of procedures for appeal.

2. Procedures for obtaining a hearing in regard to action under IDEA: 1) Should an applicant decide to appeal the Intended Action, the applicant shall request a hearing within thirty (30) calendar days of the Notice of Intended Action. The official request for a hearing must be addressed to the State Superintendent of Public Instruction, New Mexico Department of Education, State Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. The request should include at least the following a) the specific action by the NMSDE on which a hearing is desired, b) copies of available documents relating to the matter which may support the applicant's position and c) suggested hearing date(s) of not less than ten calendar days nor more than thirty (30) calendar days from date of request that are most convenient for the applicant; 2) Upon receipt of an official hearing request, the Superintendent of Public Instruction shall consider hearing dates suggested by the applicant. The Superintendent may select any hearing date (when state offices are officially open) that is within thirty (30) calendar days from date of receipt of the request; and 3) The Superintendent shall send a notice to the applicant of the date, time and place of the hearing. The notice to the applicant should include the following information: a) who may participate from both the applicant and the NMSDE and b) pertinent information deemed necessary to expedite the hearing and the findings.

3. Records Accessibility: The NMSDE shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section including records of other applicants.

4. Hearing Officer: The hearing officer shall be appointed by the State Superintendent of Public Instruction; and the hearing officer shall hold a hearing on the record. The hearing may be conducted in any manner deemed advisable so long as all parties have an opportunity to present argument.

5. Findings of the Hearing: No later than ten (10) calendar days following the hearing, the NMSDE shall issue a written ruling including findings of fact and reasons for the ruling: 1) If the NMSDE determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the NMSDE shall rescind its action; and 2) If the NMSDE does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary {United States Department of Education}. The applicant shall file notice of the appeal with the Secretary within twenty (20) days after receipt of notification from the NMSDE of the results of the NMSDE review (34 CFR 76.401). If supported by substantial evidence, findings of fact by the NMSDE are final.

XIV. ANNUAL EVALUATION

A. All special education programs are evaluated according to applicable State and Federal regulations to determine if prescribed procedures are followed with regard to child identification and eligibility and the implementation of effective programming for children with disabilities. The NMSDE annually collects and analyzes data relative to the effectiveness of each special education program through compliance reviews, review and approval of IDEA applications and approval of personnel program reports. The NMSDE cooperates in the evaluation of a program conducted by or for the Secretary or other Federal officials.

1. Data Based (Annual): The NMSDE utilizes program and personnel reports, end of year reports, student census, IDEA applications and State and Federal regulations to evaluate special education and related services.

2. Student Service Delivery Criteria (Tri-annually) - During scheduled public education agency accreditation visits (1/3 every three years), specialists of the NMSDE complete the Special Education Compliance Procedures checklist and review selected confidential folders containing IEPs and Review of Services/IEP forms. Prior to visits, public education agency personnel are provided inservice in the procedures that will be used and are requested to prepare their information prior to the NMSDE visit. If problems in programming or the IEP process are identified, the NMSDE provides technical assistance to aid in correction (Section 22-2-2(V), NMSA 1978).

3. Independent Auditors: Audit exceptions, which in some instances may reflect ineffective programming, are reported by the independent auditors to the NMSDE. The NMSDE provides technical assistance to correct the exception.

4. Annual Review of IEPs: It is the policy of the New Mexico State Board of Education that each public education agency review at least annually the IEP of each child with a disability enrolled in special education. The review is conducted by the IEP Team which assures that the parents are given an opportunity to participate. The annual review includes: 1) the child's progress toward the attainment of IEP goals and objectives; (2) the appropriateness of the child's special education program and LRE; and (3) the child's continued eligibility for special education and related services. To insure public education agency compliance with applicable State and Federal regulations, the NMSDE special education staff review each IDEA application and conduct tri-annual accreditation visits.

XV. ADDITIONAL REQUIREMENTS

A. Responsibility of the NMSDE for all Educational Programs

1. The New Mexico State Board of Education has the control, management and direction of all public schools pursuant to authority and powers provided by law (New Mexico Constitution, Article XII, Section 6). The New Mexico State Board of Education was assigned the duty to promulgate and adopt policies, rules and regulations

concerning the conduct of special education in the public schools of the state and the educational programs maintained and operated by all institutions for persons who are of school age as defined by the Public School Code (Section 22-12-2, NMSA 1978). The NMSDE Special Education Office has the program responsibility for the general supervision of educational programs for children with disabilities administered in the state.

2. The responsibility for special education in New Mexico is detailed in Section 22-13-5, NMSA 1978: "School districts shall provide special education appropriate to meet the needs of all exceptional children unless otherwise provided by law. Regulations and standards shall be developed and established by the state board for the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The New Mexico State Board of Education shall monitor and enforce the regulations and standards...".

3. Public education agencies are responsible for providing special education sufficient to meet the needs of all children with disabilities as prescribed by SENMS-CM. Special education programs shall be established in any single public education agency or jointly between or among agencies with the approval of the local board and upon application of the local superintendent to the State Superintendent of Public Instruction. These special education services are required for all children with disabilities who are ages three through twenty-one years of age.

4. The Health and Environment Department Client Education Act (Sections 24-3B-1 to 24-3B-4, NMSA 1978) further reinforces the authority of the New Mexico State Board of Education over the education of school age residents in state hospitals. All school age residents shall be evaluated by the department for purposes of educational placement according to special education regulations of the New Mexico State Board of Education. Any evaluated school age resident not recommended for placement in a public school by the department or as a result of the appeal process shall be provided an educational program by the institution in which he is a school age resident. All such educational programs shall be in accordance with the special education regulations of the New Mexico State Board of Education.

5. Agencies other than public education agencies are not limited from providing or paying some or all of the costs of a free appropriate public education to children with disabilities in the state.

B. NMSDE Accreditation Procedures

New Mexico Statutes Section 22-2-2(V) requires the New Mexico State Board of Education to annually assess and evaluate for accreditation purposes in at least one-third of all public schools to assure compliance with all applicable regulations. Accreditation involves direct/agency self-review, comparison of self-reported data with a data matrix designed by the NMSDE to classify scheduled monitoring according to identified problems such as management, curriculum, facilities or student performance.

1. Selected public education agencies from among those scheduled for review, are identified for various evaluation procedures which include NMSDE inter-unit consultation and onsite reviews. The NMSDE Special Education Office participates in the reviews jointly with other instructional areas such as School Program and Professional Development, Indian Education, Bilingual and Multicultural Education, Chapter I, Chapter II or the Vocational Education Division.

2. Onsite reviews by the NMSDE are technical assistance oriented. Each identified program is provided an overview of the accreditation model; issues are clarified and acceptable presite documentation is identified inclusive of program and personnel reports, end of year reports and child count. An onsite review is scheduled. Onsite procedures include a review of the implementation of policies and procedures related to State and Federal regulations. Validation occurs through student record review, parent interviews, personnel interviews and facilities review.

3. Deficiencies are communicated during formal exit conferences. Remediation timelines are determined and a long range corrective action plan is developed by the public education agency in collaboration with the NMSDE assigned special education consultant. The agency's designated special education consultant is the liaison

for compliance issues during the period of long range plan implementation. The special education consultant serves as a conduit for the provision of technical assistance documents and other forms of information or guidance required by the public education agency. If the public agencies fail to comply with identified deficiencies, the NMSDE initiates appropriate enforcement procedures. Accreditation status reports are provided to each public education agency. Revised or corrected policies and procedures are reviewed. Revalidation visits are conducted, as necessary. The compliance process for special education services focuses on aspects of special education service critical to the implementation of each program's full-service obligation.

The compliance procedures of the NMSDE are designed to regulate the manner in which IEPs are developed; implemented, reviewed and revised.

4. Personnel Report: Pursuant to New Mexico Statutes Sections 22-2-14, 22-2-6 and 22-2-2 NMSA 1978, agencies are required to submit data covering multiple aspects of special education services including a) numbers of students with disabilities are reported by level of service and grade cluster (or age equivalence), b) need for improved services, c) numbers and types of children needing improved services and d) number of professional staff required to provide educational, speech-language and related service evaluations.

Additional data are provided on: numbers graduated with diplomas or with certificates of completion and numbers who left school for undetermined purposes or destination. Each public education agency report is analyzed to assure compliance with SENMS-CM and IDEA Application for IDEA projects. In instances of undocumented delays, evaluation backlogs, unmet special education and related services needs, the NMSDE requires a full accounting from the reporting public education agency or school with remediation plans to eliminate the identified problem.

5. Private Schools: The December 1 Student Census and the local IDEA application accommodate appropriate information concerning those children with disabilities enrolled in private schools or referred to private agencies by the public education agency.

C. Implementation Procedures

As required by IDEA regulations, 34 CFR 300.600 (NMSDE Responsibility for all Education Programs), agencies serving children with disabilities must meet all the provisions of SENMS-CM for public education and as adopted by the New Mexico State Board of Education through its approval of the State Plan. Among the many requirements special service providers must meet, critical attention must be given to the rights of parents and children with disabilities. This is accomplished through the inclusion of a procedural safeguards component in the Plan of Action or Interagency Agreement of each agency.

To assist in accomplishing and maintaining compliance, the NMSDE disseminates information for developing a thorough understanding of NMSDE procedural safeguards.

1. The variety of methods used by the NMSDE as part of its information dissemination program include a) distributing appropriate technical assistance documents and SENMS-CM through mailings, on-site reviews and inservice workshops, b) conducting sessions at parent and professional conferences, c) conducting specific training sessions for surrogate parents, mediators, hearing officers, administrative review officers and administrators, d) requiring documentation through all applications that procedural safeguards are an integral part of district policy and procedures, e) on-site review of local and state agencies and f) interagency meetings as a forum for reinforcing the requirements of IDEA by all special services providers.

2. Activities of the IDEA State Advisory Panel for FY 1995, 1996 and 1997: The IDEA State Advisory Panel will meet as often as necessary and will advise the NMSDE on unmet needs within the state in the education of children with disabilities, comment publicly on the state annual program plan and rules or regulations proposed for issuance by the state regarding the education of children with disabilities and the procedures for distribution of funds, and assist the state in developing and reporting such information and evaluations as may assist the Secretary in the performance of his (her) responsibilities under 20 U.S.C. 1413(a)(12). By July 1 of each year, the Advisory

Panel will submit an annual report of panel activities and suggestions to the NMSDE. This report is available to the public in a manner consistent with other public reporting requirements.

XVI. INTERAGENCY AGREEMENTS

Following are excerpts from the Public School Code which specify the authority of the NMSDE to establish a state plan for federal funds, to establish standards to which participating agencies must adhere, to give technical assistance to public education agencies and to cooperate with other state agencies.

A. 22-9-2 NMSA 1978: "Federal aid to education; state educational agency. The state board shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school lunch programs, except as is provided in Section 22-1-26 NMSA 1978 and as may otherwise be provided by law."

22-9-3 NMSA 1978: State educational agency; powers; duties. "Whenever the state board is the sole educational agency of the state pursuant to the provisions of Section 22-9-2 NMSA 1978, it may:

1. enter into an agreement with the proper federal agency to procure for the state the benefits of the federal statute;

2. establish a state plan, if required by the federal statute, which meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

3. provide for reports to be made to the federal agency as may be required;

4. provide for reports to be made to the state board or its representative from agencies receiving federal funds;

5. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal funds are to be applied;

6. establish standards to which agencies must conform in receiving federal funds; and

7. give technical advice and assistance to any local educational agency in connection with that agency obtaining federal funds."

B. Joint Powers Agreement Act: Intergovernmental agreements are regulated under the Joint Powers Agreement Act, Section 11-1-1 to 11-1-7 NMSA 1978.

C. Interagency agreements shall describe the role of each agency in providing or paying for services required under IDEA Part B, define the financial responsibility of each agency for providing free appropriate public education, establish procedures for resolving interagency disputes among agencies that are parties to the agreements and establish procedures under which education agencies may initiate proceedings to secure reimbursement from agencies that are parties to the agreements or otherwise implement the agreement.

D. The NMSDE currently maintains interagency agreements with the University of New Mexico Preschool and Infant Evaluation Project, the Department of Health - Developmental Disabilities Division, the New Mexico School for the Deaf, University of New Mexico and New Mexico State University. Copies of these agreements are on file with the NMSDE and may be reviewed upon request.

XVII. PERSONNEL STANDARDS

A. "Appropriate professional requirements in the state" means entry level requirements that: 1) are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing special education or related services; and 2) establish suitable qualifications for personnel providing special education and related services to children and youth with disabilities who are served by state, local and private agencies.

"Highest requirements in the state applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any state approved or recognized certification, licensing, registration or other comparable requirements that apply to the profession or discipline.

"Profession or discipline" means a specific occupational category that: 1) provides special education and related services to children with disabilities; 2) has been established or designated by the State; and 3) has a required scope of responsibility and degree of supervision.

"State approved or recognized certification, licensing, registration or other comparable requirements" means the requirements that the state legislature either has enacted or has authorized a state agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in the state.

B. NMSDE personnel standards required of all public education agencies: 1) insure that personnel are appropriately and adequately prepared and trained; 2) insure that all professions and disciplines meet the highest requirements in the state; and 3) are consistent with state approved or recognized certification, licensing or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

C. Personnel who do not meet the highest requirements in the state applicable to a specific profession or discipline will be issued a substandard one-year license by the NMSDE at the request of the public education agency with which the personnel would be employed. The minimum qualification for personnel to be considered for the substandard one-year license is a bachelor's degree from an accredited institution of higher education. When a substandard one-year license is approved, notification of that approval is sent by the NMSDE to the public education agency with specification of the conditions of that approval. Personnel with substandard one-year licenses are required to address academic deficiencies at the rate of up to nine semester hours a year for continued employment. Continuation of the substandard license for personnel is evaluated annually on an individual basis by the NMSDE. This evaluation includes consideration of both the needs of the school district and completion of previously specified requirements by the individual for whom the continuation of the substandard license would be granted. Continuation of the substandard license is not granted after four years which has been designated as an adequate amount of time to meet the highest requirements in the state.

The NMSDE has increased efforts to reduce the number of substandard licenses in the state with the implementation of a competency-based licensure system in 1989 and more active recruitment of licensed personnel through: 1) dissemination of a document nationwide announcing all special education vacancies in the state; 2) advertisement nationwide of opportunities in New Mexico for personnel in special education; 3) development of a personnel preparation training grant through collaboration among the NMSDE, the statewide parent organization and the five state institutions of higher education; and 4) collaboration among the NMSDE Licensure Office and Special Education Office to focus on personnel issues. The NMSDE assures the continuation of current planning and implementation of collaborative activities among the NMSDE Licensure Office and Special Education Office, the statewide parent organization and the state institutions of higher education to annually reduce the number of personnel with substandard licenses. The goal of the NMSDE through this planning is to eliminate the need for the substandard license by July 1, 2010. The NMSDE assures that it has informed all public agencies in New Mexico of the steps and procedures for elimination of substandard licenses by July 1, 2010, through the dissemination of this State Plan and individual NMSDE consultation with each public education agency through NMSDE special education consultant facilitation of the development and/or review of each public education agency long range plan which includes special education.

D. The NMSDE assures that information is maintained on file related to the status of personnel standards in the state. This information is current and accurately describes, for each profession or discipline in which personnel are providing special education and related services, whether the applicable standards are consistent with the highest requirement in the state for that profession or discipline.

E. The NMSDE assures that in identifying the highest requirements in the state, consideration is given to all state statutes and the rules of all state agencies applicable to serving children with disabilities.

XVIII. USE OF IDEA PART B FUNDS

I. POLICIES AND PROCEDURES

A. General Funds Distribution

1. The IDEA authorizes funds for increased special education and related services to public education agencies through the NMSDE.

2. At least seventy-five percent (75%) of the funds awarded to the NMSDE are distributed to eligible public education agencies on a flow-through basis upon receipt of and approval of an IDEA application for funds. The applications submitted may be single or consolidated. Flow-through funds are calculated by a formula which is based on the number of children with disabilities reported as served on December 1 of a given year.

3. Twenty-five percent (25%) of the state grant may be retained by the NMSDE to implement the contents of this plan. Maximum percentages of the 25% portion will be used as described below:

a. At least twenty percent (20%) will be used for regional center cooperatives, joint powers agreements, statewide CSPD activities and competitive subgrants to eligible public and private agencies for the program requests that meet state priorities.

b. Up to five percent (5%) will be used for administrative costs incurred through the NMSDE for implementation of IDEA.

B. Public Education Agency Entitlement for FY 1994-95, 1995-96, 1996-97: Based on public education agency needs documentation and public comments on the IDEA applications, funds may be used in the following general categories to assist public education agencies to comply with IDEA:

1. To support child identification, location and evaluation activities;

2. To provide free appropriate public education to school age children;

3. To meet the full educational opportunity goal including a) employing additional personnel, b) providing inservice training in order to increase the level, intensity and quality of services and c) to meet other requirements of IDEA. For example:
   -- IEP implementation, management and technology;
   -- Assistive technology devices and services;
   -- Public and parent participation;
   -- Private school placements by public education agencies;
   -- CSPD planning;
   -- Dissemination by print or technology of information to general and special education instructional and support personnel, administrators of programs, parents of children with disabilities and other interested agencies and organizations;
   -- Modified or comparable variety of educational programs as are provided to children without disabilities inclusive of art, music, physical education, industrial arts, consumer and homemaking education and vocational education, e.g., art therapy, recreation therapy, adaptive physical education, vocational

special needs, work study;
-- School to post-school transition services;
-- Extended school year services for children with disabilities when specified in IEPs;
-- Comparable type and manner of nonacademic and extra curricular services and activities as are available to children without disabilities including: counseling, social work services, athletics, transportation, clubs sponsored by the public education agency and employment to students by the public education agency or by assistance in making outside employment available;
-- Inservice training to enable establishment of innovative programs and practices for identified local needs;
-- Use of instructional materials, consultants and other media for personnel development and instructional programming;
-- Substitutes for certified/licensed personnel, instruction, etc.;
-- Procedural safeguards provisions including impartial due process (attorneys other than hearing officers are excluded);
-- Arranging for nonacademic and extra curricular services and activities;
-- Preschool and support services to children with disabilities ages birth to five and their families. NOTE: NEW CONTENT: "IDEA entitlement funds may be used by the public education agency to provide special education services to two-year-old children who will become three years of age during the school year."

The above list is not all inclusive as long as the IDEA funds are used in accordance with the limitations of IDEA.

C. Direct Services by the NMSDE: While a public education agency may elect not to receive IDEA funds, that agency is required to implement the provisions of SENMS-CM and IDEA related to providing services to children with disabilities.

1. The NMSDE may use IDEA entitlement funds of public education agencies and other funds as necessary to insure the provision of a free appropriate public education to children with disabilities in need of special education services (ages 3-21) residing in the geographic area served by the public education agency when in any fiscal year the public education agency a) is entitled to less than $7,500 for that fiscal year, b) does not submit an application that meets the requirements and c) is unable to establish and maintain programs of free appropriate public education.

2. The NMSDE insures through its subgrantees and programs under its supervision that children with disabilities will receive a free appropriate public education and the children and their parents will be afforded rights under IDEA.

3. Should the NMSDE find it necessary to provide child services directly or through purchased services, the NMSDE will assure that the following requirements are met: consultation with parents (34 CFR 300.226), participation in regular education programs (34 CFR 300.227), least restrictive environment (34 CFR 300.550), comparable services (34 CFR 300.231) and individualized education program (34 CFR 300.340-300.349).

E. Nonreduction of Other Assistance

1. IDEA shall not be construed to limit the responsibilities of agencies other than public education agencies in a state from providing or paying for some or all of the costs of a free appropriate public education to be provided to children with disabilities in the state. In particular, the financial responsibility for the costs of screening, individual evaluation, related services and residential services including room and board and non-medical care are to be shared by health, mental health, social services and vocational rehabilitation agencies:

a. IDEA Special Education and Related Services;
b. Title XIX of the Social Security Act, including School-Based Medicaid program, the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) and the Intermediate Care Facility Program;
c. Maternal and Child Health and Crippled Children's Service under Title V of the Social Security Act;

d. The Supplemental Security Income (Disabled Children's Program) (SSI-D) of the Social Security Act;
e. The Rehabilitation Act of 1973, As Amended.

2. Participation in IDEA will not be construed by the state to permit the state to reduce medical or other assistance available or to alter the eligibility requirements of programs funded in whole or in part under Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities within the state.

II. STATE ALLOCATIONS

The following describes how the NMSDE will use the IDEA State Allocations for FY 1995, 1996 and 1997:

A. Timeline: The funds for FY 95, FY 96 and FY 97 will fall into the budget sequence for the 1994-95, 1995-96 and 1996-97 school years.

B. NMSDE Administrative Positions: Administrative positions to be maintained through IDEA Part B funds are eleven (11) professional positions and three (3) support positions.

1. Eleven professional positions will be federally funded for 1994-95, 1995-96, 1996-97 to augment the five (5) professional positions funded with state general operational funds for the purpose of administering special education programs statewide. One of the state general funded professional positions has been assigned the responsibility for facilitation of the area of gifted education.

2. Three support positions will be federally funded for 1994-95, 1995-96, 1996-97 to augment the two (2) support positions funded with state general operational funds.

Professionals	FTE	IDEA
An assistant director will supervise and coordinate staff and activities in relationship to IDEA, as well as oversee appropriate implementation of federal and state, statutory, regulatory and standards requirements. Supervised activities include grant development, accreditation/compliance review, complaint management/due process, early childhood, outcome-based education, ESY, mental health issues, family involvement, transition and evaluation.	1.00	100%
One professional, selected for expertise in early childhood education, will emphasize coordination in that area while serving as a generalist in all other matters of special education for school age children. Responsibilities include preschool grants, child-find, preschool infant evaluation, early childhood transition, parent education and forms/ procedure revision.	1.00	100%

NOTE: The NMSDE plans to move funding for the early childhood professional to Preschool administrative funds.

Nine professionals will maintain professional skills in relationship to the existing professional staff in the areas of disability expertise/training or program management expertise. Responsibilities related to these professional skills include accreditation/compliance review, student census/child count, IDEA applications, technical assistance, grant development, complaint management, transition, technology, data management, mental health, family involvement, maternal and child health and outcomes-based education.	9.00	100%

All positions will be used for the planning, management, monitoring and provision of technical assistance to special education programs and services statewide. Emphasis will be given to a strong evaluation component and documented student progress.

Paraprofessional/Support Staff	FTE	IDEA
These positions provide support to the professional staff and are responsible to: assemble documents, type correspondence or reference materials; make arrangements for conferences, meetings or accreditation visits; enter data and maintain files; independently carry out office routine; and perform other duties as required.	3.00	100%

C. NMSDE Administrative Activities for FY 1994-95, 1995-96, 1996-97. Administrative activities to be carried out with IDEA funds include:

1. Administration of the annual program plan and planning at the state level including planning or assisting in planning of programs or projects for the education of children with disabilities;

2. Provision of technical assistance to public education agencies in developing local or consolidated cooperative applications;

3. Developing and compiling data necessary for reports required by the United States Department of Education and state agencies;

4. Conducting accreditation review in each public education agency for compliance with the provision of IDEA as well as SENMS-CM;

5. Providing technical assistance to the public education agencies and other service providers;

6. Organizing and conducting meetings and implementing personnel development activities for administrators, teachers, parents, related service personnel, paraprofessionals and the general public on IDEA as well as SENMS-CM;

7. Implementing technology in special education program management; and

8. Coordinating due process hearings, appeals and complaint resolutions and other activities indicated in IDEA;

9. Facilitating other state leadership activities and consultative services.

Up to 5% or $450,000 whichever is greater of the state allocation will be used for the administration of special education programs. The NMSDE shall use the remainder of its funds under 34 CFR 300.620 in accordance with 34 CFR 300.370.

D. A Description of the Support Services Provided Under IDEA for FY 1994-95, 1995-96, 1996-97. The unexpended portion of the 5% State Administrative funds and the 20% State Discretionary dollars will be used to assist districts with providing full educational opportunities.

1. Providing rural equity in services is the first priority use of the discretionary funds. The 20% is to be directed toward incentives for public education agencies to form consolidated applications and join regional center cooperatives.

2. A portion of the funds, not allocated to regional center cooperatives or joint powers agreements, will be open to competitive subgrant applications. The competitive subgrant priorities will be established by the NMSDE based on local needs assessments and information from the Vistas sin Limites Task Force.

3. The remaining funds will be utilized by the NMSDE for CSPD activities including assistance with technology, workshops, inservice training, professional growth through attendance at conferences and technical assistance to educational agencies, parent and advocacy organizations and others.

4. Direct Services by the NMSDE may be provided in accordance with the provisions of this plan. Direct services means services provided by the State directly, by contract, or through other arrangements. Should the NMSDE find it necessary to provide direct services, the NMSDE will assure that the following requirements are met: 34 CFR 300.226-300.228; 34 CFR 34 300.231 and 34 CFR 300.235; 34 CFR 300.222; 34 300.550-300.553; and 34 CFR 300.340-349. Records will be maintained to show that the requirements have been met.

E. Funding of Expenses for the IDEA State Advisory Panel for FY 1994-95, 1995-96, 1996-97: Funds from the NMSDE 5% Administrative funds will be used to fund expenses of the IDEA State Advisory Panel.

III. IDEA ALLOCATIONS FOR FY 1995, 1996 AND 1997

A. Single and Consolidated Applications: An estimated seventy-five (75) public education agencies in New Mexico are eligible to receive the $7,500 minimum entitlement. It is projected that twenty-five (25) of the public education agencies may submit single district applications. An estimated sixty-three (63) public education agencies will submit ten (10) consolidated applications with an average of six (6) public education agencies in each application. This represents approximately 72% of the public education agencies in the state.

PART III

PRESCHOOL GRANTS APPLICATION

I. PROGRAM NARRATIVE

A. Entitlement Funds

1. The IDEA application used by the NMSDE for public education agencies to apply for funds and the approval procedures used by the NMSDE to approve IDEA applications is included as an Appendix to the IDEA State Plan and Preschool Application.

2. It is estimated that twenty-five (25) or 28% of the public education agencies in the state will receive subgrants.

3. It is estimated that ten (10) consolidated applications will be funded with an average of six (6) public education agencies in each consolidated application.

B. Discretionary Funds

1. The discretionary funds of the grant will be used for joint powers agreements, state Comprehensive System of Personnel Development (CSPD) activities and competitive discretionary subgrants to eligible public and private agencies for project requests that meet state priorities for FY 1994-95, 1995-96, 1996-97.

2. The NMSDE has implemented a Comprehensive System of Personnel Development (CSPD) with a goal of quality improvement in personnel preservice and inservice to insure that all personnel necessary to provide appropriate services to children with disabilities are qualified. It includes procedures for acquiring and disseminating significant information derived from research and demonstration and for adopting promising educational practices. It also includes provisions for inservice training of general and special education instructional and related services personnel. CSPD activities include:

a. the development of a State Long Range Plan for Special Education developed by a statewide multirepresentative task force;

b. the coordination of activities for the development of licensure requirements for early childhood personnel serving children with disabilities birth through five years of age;

c. the collaboration among the Department of Health, Developmental Disabilities Division (DOH-DDD), institutions of higher education and public education agencies for continued support of personnel recruitment and retention efforts through improved information sharing and planning;

d. the collaboration of the NMSDE and the DOH-DDD to maintain an ongoing collection of statewide needs assessment data regarding inservice training for personnel providing services to children with disabilities ages birth through five years of age and their families;

e. the support of six model preschool demonstration sites across the state to develop and implement fully inclusive, developmentally appropriate, culturally sensitive and family centered early intervention services which can demonstrate best practices in early childhood service provision for the state;

e. the evaluation of the NMSDE dissemination activities consistent with CSPD requirements.

Public education agencies may use entitlement or discretionary funds to implement CSPD activities. CSPD activities are contingent on the needs identified through the public education agency long range planning process. The goal of implementation of these CSPD activities is that all children with disabilities three through five years of age will receive appropriate services from qualified personnel. Through continued interagency collaboration, a statewide comprehensive service delivery system will be achieved for children with disabilities birth through five years of age.

3. The NMSDE is involved in the following activities to insure the provision of a free appropriate public education to children two years of age who will become three years of age during the school year.

a. The NMSDE and the DOH-DDD have formalized a Memorandum of Understanding addressing children with disabilities two years of age who will become three years of age during the school year and the transition of these children from community program services to the public education agency preschool services. Technical assistance will be provided statewide regarding this document.

b. NMSDE staff participate in the Part H Interagency Coordinating Council and DOH-DDD staff participate in the IDEA State Advisory Panel. Through this participation, early childhood issues including transition and a comprehensive system of services are addressed and recommendations made for implementation.

c. NMSDE staff and DOH-DDD staff have collaborated on Child Find procedures resulting in a comprehensive child find system; early childhood evaluation and assessment guidelines; early childhood service delivery guidelines (in development); early childhood personnel standards; and procedural safeguards for children with disabilities birth through two years of age.

d. Through a collaborative effort among the NMSDE, the DOH-DDD and Parents Reaching Out (PRO), a statewide system has been established to provide, collect and analyze information regarding Child Find activities and early childhood services through a toll free telephone number.

e. Regional meetings of early childhood personnel are held at statewide conferences such as the Magic Years Conference and the Council for Exceptional Children Conference and focus on networking and technical assistance needs for increased collaborative efforts in addressing service provision and transition issues for children with disabilities birth through five years of age.

C. Administrative Funds

1. Compliance review activities are conducted to insure the provision of a free appropriate public education for all preschool children with disabilities three through five years of age receiving special education services.

2. Technical assistance is provided to eighty-eight public education agencies regarding preschool special education services and to projects funded through Section 619 Preschool discretionary subgrants.

3. Ongoing technical assistance is provided to the Preschool Infant Evaluation (PIE) Program on all aspects of IDEA including the implementation of preschool evaluation policies and procedures.

4. A technical assistance document has been developed regarding best practices in assessment and evaluation for children with disabilities three through five years of age. A technical assistance document is in development regarding best practices in service provision for children with disabilities three through five years of age.

5. An early childhood issues interagency action team meets regularly to address early childhood issues in the NMSDE and across agencies statewide.

6. Planning with the DOH-DDD continues to further strengthen transition services for children with disabilities two years of age who will become three years of age and continues to address the implementation of a statewide comprehensive system of early childhood services.

7. Collaborative work will continue with other NMSDE staff and the state institutions of higher education to implement the early childhood licensure system recently adopted by the New Mexico State Board of Education.

8. A directory of early intervention programs statewide for children with disabilities three and four years of age is maintained and regularly updated.

9. A directory of personnel statewide providing services to children with disabilities three and four years of age is maintained and regularly updated.

10. The NMSDE plans to move funding for the NMSDE Special Education Office early childhood consultant to preschool administrative funds.

D. Direct Services from the NMSDE

1. While a public education agency may elect not to receive IDEA funds, that public education agency is required to implement the provisions of IDEA and SENMS-CM related to special education and related services to children with disabilities. Should the scope of services that the public education agency is required to provide not be appropriate, the NMSDE may withhold IDEA funds and provide for educational programs by a) awarding grants to an appropriate public agency or regional center cooperative to implement the IDEA activities for the public education agency or b) awarding grants to appropriate public or private institutions within or outside the state for the provision of services. All special education and related services for a child with a disability are based on the child's IEP and the public education agency remains directly responsible for the services provided to implement the child's IEP whether or not that public education agency directly provides the services.

2. The NMSDE may use IDEA entitlement funds of the public education agency and other funds as necessary to insure the provision of a free appropriate public education to children and youth with disabilities three through twenty-one years of age in need of special education services and residing in the geographic area served by the public education agency when in any fiscal year the public education agency a) is entitled to less than $7500 for that fiscal year, b) does not submit an application that meets IDEA requirements or c) is unable to establish and maintain services which result in a free appropriate public education.

3. The NMSDE insures through its subgrantees and services under its supervision that children with disabilities will receive a free appropriate public education and that children with disabilities and their parents are afforded all IDEA procedural safeguards.

4. Should the NMSDE find it necessary to provide special education services directly to a child with a disability or provide special education services through purchased services, the NMSDE assures that the following requirements will be met: parent involvement (34 CFR 300.226-228), participation in general education (34 CFR 300.227), least restrictive environment (34 CFR 300. 550-553), comparable services (34 CFR 300. 231-235) and individualized education program (34 CFR 300.340-300.349).

II. BUDGET INFORMATION

A. The NMSDE assures that IDEA funds under this preschool grant will be allocated according to the requirements of 34 CFR 301.301.

1. Percentage of IDEA preschool funds the NMSDE will award to public education agencies which must be at least 75% of the grant award:

a. FY 1994-95	75%
b. FY 1995-96	75%
c. FY 1996-97	75%

2. Percentage of IDEA preschool funds the NMSDE will award to public education agencies for support services including planning and development of a comprehensive service delivery system which must be at least 20% of the grant award:

a. FY 1994-95	20%
b. FY 1995-96	20%
c. FY 1996-97	20%

3. Percentage of IDEA preschool funds the NMSDE will use for administrative costs which must not be more than 5% of the grant award:

a. FY 1994-95	5%
b. FY 1995-96	5%
c. FY 1996-97	5%

NOTE: The NMSDE plans to move the funding for the NMSDE Special Education Office early childhood consultant to preschool administrative funds.

APPENDIX A

A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

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Sec. 6. [State department of public education; state board of education.]

A. There is hereby created a "state department of public education" and a "state board of education". The state board of education shall determine public school policy and vocational educational policy and shall have control, management and direction, including financial direction, distribution of school funds and financial accounting for all public schools, pursuant to authority and powers provided by law. The board shall appoint a qualified, experienced educational administrator to be known as the superintendent of public instruction, who shall, subject to the policies established by the board, direct the operation of the state department of public education.

B. Ten members of the state board of education who shall be state officers shall be elected for staggered terms of four years as provided by law. Board members shall be residents of the board of education district from which they are elected. Change of residence of a board member to a place outside the district from which he was elected shall automatically terminate the term of that member.

C. Five members of the state board of education who shall be state officers shall be nominated and by and with the consent of the senate appointed by the governor from five districts substantially equal in population for staggered four-year terms as provided by law. Those appointed by the governor shall be qualified electors of the state of New Mexico, no more than one-half or a simple majority of whom at the time of their appointment shall be members of the same political party. After 1990, the number of appointed members may be changed by law not to exceed five members.

D. The governor shall fill vacancies on the board by appointment of a resident from the district in which the vacancy occurs until the next regular election for membership on the board.

E. Upon adoption of this amendment, all functions relating to the distribution of school funds and financial accounting for the public schools shall be transferred to the state department of public education to be performed as provided by law. (As amended November 4, 1958, effective January 1, 1959 and November 4, 1986.)

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Article 1
Joint Powers Agreements

Sec. 11-1-1. Short title.
11-1-2. Definitions.
11-1-3. Authority to enter into agreements; approval of the secretary of finance and administration required.
11-1-4. Terms and conditions of joint agreements.
11-1-5. Powers of administering agency under agreement.
11-1-6. Privileges and immunities, exemptions, benefits.
11-1-7. Power to issue revenue bonds.

§ 11-1-1. Short title.

This act [11-1-1 to 11-1-7 NMSA 1978] may be cited as the "Joint Powers Agreements Act."

§ 11-1-2. Definitions.

As used in the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978]:

A. "public agency" means the federal government or any federal department or agency, this state, an adjoining state or any state department or agency, an Indian tribe or pueblo, a county, municipality, public corporation or public district of this state or an adjoining state; it also specifically includes any state educational institution specified in Article 12, Section 11 of the constitution of New Mexico and any school district in this state;

B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to any constitutional or legislative restriction imposed upon any of the contracting public agencies; provided that nothing in the Joint Powers Agreements Act shall be construed to authorize any interstate water supply agreement or to limit the powers of any interstate water compact commission, the interstate stream commission or the state engineer, or to limit the powers of any state agency or political subdivision to enter into agreements with the interstate stream commission or the state engineer;

C. "bonds" means revenue bonds;

D. "bondholder" means any person who shall be the bearer of any outstanding revenue bond or the owner of bonds which shall at the time be registered to other than the bearer;

E. "governing body" means the board or commission provided for under the Joint Powers Agreements Act;

F. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds, and may be a resolution, order, agreement or other instrument; and

G. "project" means the building or other structure or improvements and all facilities appurtenant thereto or provided therefor to be financed by bonds

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issued pursuant to the Joint Powers Agreements Act.

§ 11-1-3. Authority to enter into agreements; approval of the secretary of finance and administration required.

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting parties may be located outside this state; provided, however, nothing contained in this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] shall authorize any state officer, board, commission, department or any other state agency, institution or authority, or any county, municipality, public corporation or public district to make any agreement without the approval of the secretary of finance and administration as to the terms and conditions thereof. Joint powers agreements approved by the secretary of finance and administration shall be reported to the state board of finance at its next regularly scheduled public meeting. A list of the approved agreements shall be filed with the office of the state board of finance and made a part of the minutes.

§ 11-1-4. Terms and conditions of joint agreements.

A. Every agreement executed by one or more public agencies shall clearly specify the purpose of the agreement or for any power which is to be exercised. The agreement shall provide for the method by which the purpose will be accomplished and the manner in which any power will be exercised under such agreement.

B. The parties to the agreement may provide therein that:

(1) contributions from the funds of the public agencies may be made for the purpose set forth in the agreement; or

(2) payments of public funds may be made to defray cost of such agreement; or

(3) advances of public funds of the public agencies be made for the purpose set forth in the agreement and that such advances be repaid as provided in such agreement.

C. The agreement may provide that funds be paid to and disbursed by the agency agreed upon by the public agencies under the terms of the agreement.

D. The agreement shall provide for strict accountability of all receipts and disbursements.

E. The agreement may be continued for a definite term or until rescinded or terminated, and may provide for the method by which it may be rescinded or terminated by any party.

F. The agreement shall provide for the disposition, division or distribution of any property acquired as the result of the joint exercise of powers, and shall further provide that after the completion of the agreement's purpose any surplus money on hand shall be returned in proportion to the contributions made.

G. If the purpose set forth in [the] agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide:

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(1) for the repayment or return to the parties of all or any part of any contributions, payments or advancements made by the parties pursuant to such agreement; and

(2) for payment to the parties of any sum derived from the revenues of such facilities.

H. Payments, repayments or returns to a public agency shall be made at the time and in the manner specified in the agreement.

§ 11-1-5. Powers of administering agency under agreement.

A. The agency provided by the agreement to administer or execute the agreement may be one of the parties to the agreement or a commission or board constituted pursuant to the agreement.

B. The administering agency under any such agreement shall be considered under the provisions of this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] as an entity separate from the parties to such agreement.

C. The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.

§ 11-1-6. Privileges and immunities, exemptions, benefits.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

§ 11-1-7. Power to issue revenue bonds.

In addition to other powers, any agency, commission or board provided for by a joint powers agreement pursuant to this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] may issue revenue bonds to pay the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement; provided, however, such authority shall be subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of this state.

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§ 14-2-1. Right to inspect public records: exceptions.

Every citizen of this state has a right to inspect any public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;

B. letters of reference concerning employment, licensing or permits;

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

D. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978]; and

E. as otherwise provided by law.

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§ 22-1-2. Definitions.

As used in the Public School Code:

A. "state board" means the state board of education;

B. "state superintendent" means the superintendent of public instruction;

C. "department of education" means the state department of public education;

D. "certified school instructor" means any person holding a valid certificate authorizing the person to teach, supervise an instructional program, counsel or provide special instructional services in the public schools of the state;

E. "certified school administrator" means any person holding a valid certificate authorizing the person to administer in the public schools of the state;

F. "certified school personnel" means certified school instructors and certified school administrators;

G. "certificate" means a certificate issued by the state board authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services or administer in the public schools of the state;

H. "chief" or "director" means the state superintendent or his designee unless the context clearly indicates otherwise;

I. "private school" means a school offering programs of instruction not under the control, supervision or management of a local school board, exclusive of home instruction offered by the parent, guardian or one having custody of the student;

J. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

K. "local school board" means the governing body of a school district; L. "public school" means that part of a school district which is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;

M. "school year" means the total number of teaching days offered by public schools in a school district during a period of twelve consecutive months;

N. "consolidation" means the combination of part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

O. "consolidated school district" means a school district created by order of the state board by combining part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

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P. "state institution" means the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the Las Vegas medical center or the Carrie Tingley crippled children's hospital;

Q. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

R. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;

S. "school" means any supervised program of instruction designed to educate a person in a particular place, manner and subject area;

T. "school-age person" means any person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for persons who are classified as special education membership as defined in Section 22-8-2 NMSA 1978 or as residents of state institutions;

U. "home school" means the operation by a parent, guardian or other person having custody of a school-age person of a home study program which provides a basic academic educational program, including but not limited to reading, language arts, mathematics, social studies and science; and

V. "school building" means a public school, an administration building and related school structure or facilities, including teacher housing, as may be owned, acquired or constructed by the local school board and as necessary to carry out the powers and duties of the local school board.

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§ 22-1-3. Definitions; public schools; classifications.

As used in the Public School Code:

A. "elementary school" means a public school providing instruction for grades kindergarten through eight, unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades kindergarten through six;

B. "secondary school" means a public school providing instruction for grades nine through twelve, unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades seven through twelve;

C. "junior high school" means a public school providing a junior high school program approved by the state board for grades seven through nine, or for grades seven and eight; and

D. "high school" means a public school providing instruction for any of the grades nine through twelve, unless there is a junior high school program approved by the state board for grades seven through nine, in which case it means a public school providing instruction for any of the grades ten through twelve.

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§ 22-2-2. State board; duties.

Without limiting those powers granted to the state board pursuant to Section 22-2-1 NMSA 1978, the state board shall perform the following duties:

A. properly and uniformly enforce the provisions of the Public School Code;

B. determine policy for the operation of all public schools and vocational education programs in the state;

C. appoint a state superintendent;

D. purchase and loan instructional material to students pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978];

E. designate courses of instruction to be taught in all public schools in the state;

F. assess and evaluate those private schools which desire state accreditation;

G. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools according to law and according to a system of classification adopted and published by the state board;

H. suspend or revoke a certificate held by a certified school instructor or certified school administrator according to law for incompetency, immorality or for any other good and just cause;

I. make full and complete reports on consolidation of school districts to the legislature;

J. prescribe courses of instruction, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions under the authority of the secretary of health and environment;

K. adopt regulations for the administration of all public schools and bylaws for its own administration;

L. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;

M. authorize adult educational programs to be conducted in schools under its jurisdiction and promulgate and publish regulations governing all such adult educational programs;

N. require any school under its jurisdiction which sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. require all accrediting agencies for public schools in the state to act with its approval;

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§ 22-2-2. State board; duties.

Without limiting those powers granted to the state board pursuant to Section 22-2-1 NMSA 1978, the state board shall perform the following duties:

V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of public education personnel to investigate the adequacy of pupil gain in standard required subject matter, adequacy of pupil activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

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§ 22-2-6. Department of education; duties.

Subject to the policies of the state board and the supervision and direction of the state superintendent, the department of education shall have the following duties:

A. supervise all schools and school officials coming under the jurisdiction of the state board;

B. advise boards of regents of state educational institutions on matters concerning the Public School Code;

C. prescribe, print and distribute forms to carry out the duties of the state board pursuant to the Public School Code;

D. annually, prior to December 1, prepare and publish a report on public and private education in the state and distribute the report to the governor and the legislature;

E. keep accurate records of all money received by the state superintendent or the department of education;

F. publish and distribute copies of the Public School Code and regulations promulgated by the state board to local school boards in the state;

G. confer with local school boards and certified school personnel on matters concerning education in the state;

H. prepare and distribute patriotic material to schools in the state; and

I. evaluate all educational programs in state institutions under the authority of the secretary of the health and environment department.

§ 22-2-14 Education requirements; enforcement; procedures.

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and regulations as prescribed by the state board. The state superintendent shall give written notification to a local school board of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The state superintendent shall disapprove instructional units or administrative functions which he determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board shall:

(1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or

(2) submit plans satisfactory to the state superintendent to meet requirements and remove the cause for disapproval.

C. The state board shall suspend from authority and responsibility any local school board which has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The state superintendent shall act in lieu of the suspended local school board until the state board removes the suspension.

D. To suspend a local school board, the state board shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the state board, at which the local school board may appear and show cause why it should not be suspended. Within five days after the hearing, the state board shall make permanent, modify or withdraw the alternative order.

E. The state superintendent may suspend a local school board pending a hearing before the state board when the local school board has been notified of disapproval and when the state superintendent has sufficient reason to believe that the educational process in the school district has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before the question of suspension can be presented to the state board for a hearing.

F. The state superintendent while acting in lieu of a suspended local school board, shall execute all the legal authority of the local school board and assume all the responsibilities of that board.

G. The provisions of this section shall be invoked at any time the state superintendent finds the school district has failed to attain and maintain the requirements of law or state board standards and regulations.

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§ 22-2-15. Hearings; suspension continuance and discontinuance.

A. Within ten days after suspension, or within a reasonable time as the suspended local school board may request, the state board shall give a hearing to the local school board. At this hearing the local school board may appear and show cause why suspension should not be continued. The state board employees who conducted evaluations upon which the suspension was based shall appear and give testimony.

B. After the hearing the state board shall continue or discontinue the suspension of the local school board.

C. Any local school board aggrieved by the decision of the state board of education may within thirty days from the date of the decision appeal such decision to the court of appeals. If the court finds that the decision of the state board was prejudicial to the school district because the state board's findings, inferences or conclusions are:

(1) in violation of the constitution;

(2) in excess of statutory authority;

(3) made upon unlawful procedure; or

(4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, it shall remand the proceedings to the state board for the taking and consideration of further evidence or testimony, or it shall reverse the decision of the state board and terminate the suspension.

§ 22-8-21. Special education program units.

A. For the purpose of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978], special education programs for exceptional children are those approved by the department of education and classified as follows:

(1) class A programs, in which a specially trained teacher travels from class to class or school to school assisting teachers and students on a part-time basis and in which the ratio of students to teachers is prescribed by the department of education;

(2) class B programs, in which a specially trained teacher is assigned to a classroom, called a "resource room", and works with students on a regular part-time basis and in which the ratio of students to teachers is regulated by special education standards approved by the state board;

(3) class C programs for moderately handicapped students whose needs require a specially trained teacher working in a special classroom, in which the ratio of students to teachers in class C programs is regulated by special education standards approved by the state board;

(4) class D programs for severely handicapped students in which a specially trained teacher is assigned full time to a special classroom and in which the ratio of students to teachers is regulated by special education standards approved by the state board; students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and

(5) programs for developmentally disabled three- and four-year-old children meeting standards approved by the state board.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department of education before the students may be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) for class A and class B programs as defined in Subsection A of this section, the product of the number of approved class A and class B programs requested by the local school board and certified to the division by the department of education multiplied by the cost differential factor 20;

(2) the special education ADM in class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.9;

(3) the special education ADM in class D programs as defined in Subsection A of this section multiplied by the cost differential factor 3.5; and

(4) the special education ADM for developmentally disabled three- and four-year-old children as defined in Paragraph (5) of Subsection A of this section multiplied by the cost differential factor 3.5; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units.

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§ 22-9-2. Federal aid to education; state educational agency.

The state board shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school lunch programs, except as is provided in Section 21-1-26 NMSA 1978 and as may otherwise be provided by law.

§ 22-9-3. State educational agency; powers; duties.

Whenever the state board is the sole educational agency of the state pursuant to the provisions of Section 22-9-2 NMSA 1978, it may:

A. enter into an agreement with the proper federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, which meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the state board or its representative from agencies receiving federal funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal funds are to be applied;

F. establish standards to which agencies must conform in receiving federal funds; and

G. give technical advice and assistance to any local educational agency in connection with that agency obtaining federal funds.

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§ 22-9-9. Agencies for grants-in-aid; powers; duties.

Whenever, under any act of the congress of the United States, federal aid to education is made available to the states:

A. the superintendent of public instruction shall:

(1) enter into any agreements with the proper federal agency or agencies necessary to procure for this state all benefits which may be available under any such act of congress;

(2) provide for and install an adequate system of auditing for the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to local school jurisdictions and teacher-training institutions, to educational agencies and institutions, conducting adult education, and to the state educational authority for any other purpose or purposes;

(3) provide an adequate system of reports to be made to such superintendent from local school jurisdictions and teacher-preparation institutions, from educational agencies and institutions conducting adult education, and from such other jurisdictions, institutions and agencies as may be required;

(4) develop and provide a plan of apportioning among local school jurisdictions any funds received for expenditure within such jurisdictions in such manner as to assist effectively in equalizing educational opportunities in public elementary and secondary schools within the state, such plan to conform as near as may be to any requirements of the act of congress and rules and regulations issued thereunder;

(5) develop and provide a plan of apportioning any funds received for expenditures in eligible institutions based on recommendations of the board of educational finance;

(6) develop and provide a plan for apportioning funds received for expenditure for adult education among public educational agencies and institutions in this state in such manner as will effectively contribute to the development of an economical, effective and comprehensive program of adult education; and

(7) make surveys and prepare and maintain state standards for the development of improved administrative units and attendance areas for the public elementary and secondary schools in anticipation of the availability of funds for the construction or alteration of buildings in connection with the public elementary and secondary schools, and for such purpose the superintendent may cooperate with any other public agency which he may designate; and

B. the state librarian of this state is hereby authorized and directed to:

(1) enter into any and all agreements with the proper federal agency or agencies necessary to procure for this state all benefits for rural or other library service which may be available under any such act of congress;

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(2) make and administer all plans which may be necessary to carry out any provisions of any such act of congress which offers aid to library service;

(3) provide for and install an adequate system of auditing of the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to libraries and library services;

(4) provide for an adequate system of reports to be made to him from libraries and library services; and

(5) develop and provide a plan for apportioning any funds received for expenditure for library service which will provide for maintenance of a cooperative and integrated system of library service throughout the state, for suitable cooperative arrangements with school systems, cooperative agricultural extension services, and other appropriate agencies, and in such manner of apportioning as will effectively lessen inequalities of opportunity for library service.

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§ 22-10-3. Certificate requirement; types of certificates; forfeiture of claim; exception; administrator apprenticeship.

A. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school shall hold a valid certificate authorizing the person to perform that function.

B. All certificates issued by the state board shall be standard certificates except that the state board may issue substandard and substitute certificates under certain circumstances. If a local school board or the governing authority of a state agency certifies to the state board that an emergency exists in the hiring of a qualified person, the state board may issue a substandard certificate to a person not meeting the requirements for a standard certificate. The state board may also issue a substitute certificate to a person not meeting the requirements for a standard certificate to enable the person to perform the functions of a substitute teacher pursuant to the regulations of the state board. All substandard and substitute certificates issued shall be effective for only one school year. No person under the age of eighteen years shall hold a valid certificate, whether a standard, substandard or substitute.

C. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school without a valid certificate after the first three months of the school year shall thereafter forfeit all claim to compensation for services rendered.

D. This section shall not apply to a person performing the functions of a practice teacher as defined in the regulations of the state board.

E. Notwithstanding any existing requirements, any person seeking certification as an administrator shall be required to serve a one-year apprenticeship. The state board shall develop criteria and regulations to implement the provisions of this subsection.

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§ 22-12-2. Compulsory school attendance; responsibility.

A. Any qualified student and any person who because of his age is eligible to become a qualified student as defined by the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

(1) the person is specifically exempted by law from the provisions of this section;

(2) the person has graduated from a high school;

(3) the person is at least sixteen years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent, guardian or other person having custody and control consents;

(4) with consent of the parent, guardian or person having custody and control of the person to be excused, the person is excused from the provisions of this section by the superintendent of schools of the school district in which the person is a resident and the person is under eight years of age; or

(5) the person is judged, based on standards and procedures adopted by the state board, to be unable to benefit from instruction because of learning disabilities or mental, physical or emotional conditions.

B. A person subject to the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident.

C. Any parent, guardian or person having custody and control of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

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§ 22-12-4. Right to education.

All school age persons in the state shall have a right to a free public education as follows:

A. except for school age persons who are detained or enrolled in state institutions other than those school age persons provided for in Subsection C of this section, any school age person shall have a right to attend public school within the school district in which he resides or is present;

B. except as provided in Subsection C of this section, the state institution in which a school age person is detained or enrolled shall be responsible for providing educational services for the school age person; and

C. any school age person who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary of the health and environment department shall have a right to attend public school in the school district in which the institution, in which he is a client, is located if:

   (1) the school age person has been recommended for placement in a public school by the educational appraisal and review committee of the district in which the institution is located; or

   (2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education regulations of the state board of education.

§ 22-13-5. Special education for exceptional children.

School districts shall provide special education appropriate to meet the needs of all exceptional children unless otherwise provided by law. Regulations and standards shall be developed and established by the state board for the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The state board shall monitor and enforce the regulations and standards. School districts shall also provide services for three-year-old and four-year-old developmentally disabled children unless the parent or guardian chooses not to enroll his child. These services may include evaluating and diagnosing particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing speech, physical or occupational therapy and providing parent education. The services may be provided by school personnel or contracted for with other community agencies and may be either home-based or center-based.

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§ 22-13-6. Special education; definitions.

As used in the Public School Code:

A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;

B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;

C. "developmentally disabled children" means those children who are classified as developmentally disabled according to the Developmental Disabilities Community Services Act; and

D. "gifted child" means a school-age person whose measured intelligence quotient, either verbal or nonverbal, measures at least 2 standard deviations above the mean on an intelligence test approved by the state board and who meets at least one of the following additional criteria:

(1) a score of at least the ninety-fifth percentile and above the total battery score on a standardized achievement test approved by the state board;

(2) outstanding creativity or divergent thinking as established in the educational standards for New Mexico schools; and

(3) outstanding critical thinking or problem-solving ability on a test as established in the educational standards for New Mexico schools.

E. Nothing in this section shall preclude a district from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for state department of education approved gifted programs for those students who meet the established criteria.

§ 22-13-7. Special education; responsibility.

A. The state board shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department of education with the approval of the state board shall set standards for diagnosis and screening of and educational offerings for exceptional children in public schools, in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health and environment.

C. The state board shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional children in the public schools. This program shall be operated with the cooperation of local school districts, portions of the program may be subcontracted and periodic reports regarding the efficacy of programs for exceptional children shall be made to the legislative education study committee.

§ 22-13-8. Special education; private.

A. The responsibility of school districts, institutions and the state to provide a free public education for exceptional children is not diminished by the availability of private schools and services. Whenever such schools or services are utilized, it continues to be a state responsibility to assure that all exceptional children receive the education to which the laws of the state entitle them.

B. A local school board may make an agreement with private, nonsectarian, nonprofit educational training centers for educating exceptional children and for providing for payment for such education. All financial agreements between local boards and private, nonsectarian, nonprofit educational training centers must be negotiated in accordance with regulations promulgated by the director. Payment for education and services under such agreements shall be made by the local board of education from funds available.

C. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers must be approved by the state superintendent. All agreements must provide for diagnosis and an educational program for each child which meets state standards for such programs. The agreements must also acknowledge the authority and responsibility of the local board and the department of education to conduct on-site evaluations of programs and pupil progress to insure meeting state standards.

D. Exceptional children attending a private, nonsectarian, nonprofit training center shall be counted in the special education membership of the school district as enrolled in the Class D special education program.

Article 3B

Health and Environment Department Client Education

Sec. 24-3B-1. Short title.
24-3B-2. Definitions.
24-3B-3. Education of school age residents.
24-3B-4. Fund created; use; calculation.

§ 24-3B-1. Short title.

The provisions of Sections 1 through 4 [24-3B-1 to 24-3B-4 NMSA 1978] may be cited as the "Health and Environment Department Education Act".

§ 24-3B-2. [Definitions.]

As used in the Health and Environment Department Education Act [24-3B-1 to 24-3B-4 NMSA 1978]:

A. "department" means the health and environment department as created under the Health and Environment Department Act;

B. "educational appraisal and review committee" means the educational appraisal and review committee as defined in the special education regulations of the state board of education;

C. "evaluated school age resident" means a school age resident who has been evaluated by the department according to the state board of education special education regulations;

D. "fund" means the health and environment department education fund;

E. "institution-bound resident" means an evaluated school age resident who is not enrolled in a public school;

F. "referred school age resident" means an evaluated school age resident who has been referred to a school district for enrollment;

G. "school age resident" means a school age person as defined in Section 22-1-2 NMSA 1978 who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary; and

H. "secretary" means the secretary of the department.

§ 24-3B-3. Education of school age residents.

A. All school age residents shall be evaluated by the department for purposes of educational placement according to the special education regulations of the state board of education.

B. Any evaluated school age resident not recommended for placement in a public school by the department or as a result of the appeal process shall be provided an educational program by the institution in which he is a school age resident. All such educational programs shall be in accordance with the special education regulations of the state board of education.

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C. The department shall refer any evaluated school age resident who has been recommended for placement in a public school to a school district for enrollment.

D. The educational appraisal and review committee of a school district shall evaluate and recommend placement of all referred school age residents according to the placement process as provided in the special education regulations of the state board of education. A school district shall enroll all referred school age residents who have been recommended for placement in a public school by the educational appraisal and review committee of the school district.

E. The department may appeal any recommendation to not place a referred school age resident in a public school only if such recommendation is made by the educational appraisal and review committee of the school district where the institution, in which the referred school age resident is a client, is located. The appeal process shall be as provided in the special education regulations of the state board of education. Any referred school age resident who has been recommended for placement in a public school as a result of the appeal process shall be enrolled in the school district where the institution, in which the referred school age resident is a client, is located, as provided in Paragraph (2), Subsection C of Section 22-12-4 NMSA 1978.

F. All school age residents who are enrolled in a public school shall be counted in the special education membership of the school district.

G. Transportation for all school age residents enrolled in a public school shall be provided to and from the institution in which they are clients and the public school in which they are enrolled. Such transportation shall be provided in accordance with Section 22-8-2 and Sections 22-16-1 through 22-16-10 NMSA 1978.

§ 24-3B-4. Fund created; use; calculation.

A. There is created the "health environment department education fund" in the state treasury.

B. The fund shall be used solely to provide educational services to institution-bound residents of the state institutions under the authority of the secretary.

C. The secretary shall distribute the fund to institutions under his authority within limits established by law.

D. The secretary shall determine the allocation to each institution from the fund according to the annual program cost of that institution as calculated on September 15 of the fiscal year.

E. The annual program cost for each institution shall be determined by the following calculation:

number of institution-bound residents	x 3.9 x	dollar value per program unit	=	annual program cost

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7. The dollar value per program unit shall be the same as the dollar value per program unit as established by the legislature for the state equalization guarantee.

G. Each director of each state institution under the authority of the secretary shall submit annually, on or before October 15, to the secretary an estimate for the succeeding fiscal year of the number of institution-bound residents and any other information necessary to calculate annual program cost.

H. The secretary shall submit annually, on or before November 15, to the deparment of finance and administration the recommendations of the department regarding the fund for the succeeding fiscal year, for inclusion in the executive budget document.

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Article 16
Developmental Disabilities Community Services

Sec. 28-16-1. Short title.
28-16-2. Legislative purpose.
28-16-3. Definitions.
28-16-4. Assessment of needs of state's developmentally disabled population.
28-16-5. Planning for community services for persons with developmental disabilities.
28-16-6. Authorization for provision of community-based services for the developmentally disabled.
28-16-7. Standards for services.
28-16-8. Admission and discharge of clients from developmental disabilities services purchased by the health and environment department.
28-16-9. Programmatic review and monitoring compliance with regulations and contractual requirements.
28-16-10. Determination of rates for payment for services.
28-16-11. Independent status of contractors.
28-16-12. Developmental disabilities early childhood evaluation system.
28-16-13. Disabled persons; information and referral system; coordination and continuation.
28-16-14. Developmental disabilities planning council; creation.
28-16-15. Developmental disabilities planning council; powers; duties.
28-16-15.1. Development disabilities planning council; additional duty. (Effective until February 23, 1994.)
28-16-16. Developmental disabilities planning council; staff.
28-16-17. Developmental disabilities planning council; reports.
28-16-18. Developmental disabilities planning council; compensation.

§ 28-16-1. Short title.

This act [28-16-1 to 28-16-12 NMSA 1978] may be cited as the "Developmental Disabilities Community Services Act."

§ 28-16-2. Legislative purpose.

It is the purpose of the legislature in enacting the Developmental Disabilities Community Services Act [28-16-1 to 28-16-12 NMSA 1978] to authorize the health and environment department to plan and coordinate developmental disabilities community services in the state and to declare that priority shall be given to the development and implementation of community-based services for developmentally disabled minors and adults, which will enable and encourage such individuals to achieve their greatest potential for independent and productive living, which will enable them to live in their own homes and apartments or in facilities located within their own communities and which will assist clients to be diverted or be removed from unnecessary institutional placements.

§ 28-16-3. Definitions.

As used in the Developmental Disabilities Community Services Act [28-16-1 to 28-16-12 NMSA 1978]:

A. "client" means any person who is requesting, receiving or being considered for

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developmental disabilities services;

B. "contractor" means a nonprofit corporation, tribal government or tribal organization, unit of local government or other organization which has entered into contract with the department for the purpose of providing developmental disabilities services;

C. "department" means the health and environment department;

D. "developmental disability" means a severe chronic disability of a person, other than a primary diagnosis of mental illness which is attributable to a mental or physical impairment or a combination of mental and physical impairments; is manifested before the person attains age twenty-two; is likely to continue indefinitely; results in substantial functional limitations in three areas of major life activity; and reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are individually planned and coordinated. Persons who are diagnosed as mentally retarded, cerebral palsied, epileptic or autistic and who have at least one functional limitation in an area of major life activity shall be considered developmentally disabled. Infants and preschool-aged children at risk of being developmentally disabled shall also be considered developmentally disabled for purposes of the Developmental Disabilities Community Services Act;

E. "diagnostic evaluation" means an empirical process that determines if, and to what degree, a child or an adult has developmental deficiencies and what interventions and services are needed for the child or adult and the family;

F. "habilitation" means the process by which professional persons and their staff assist the developmentally disabled person in acquiring and maintaining those skills and behaviors which enable him to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. Habilitation includes programs of formal, structured education and treatment; and

G. "interdisciplinary team" means a group of persons drawn from or representing those professions that are relevant to identifying a child's or an adult's needs and designing a program to meet them and that is responsible for collectively evaluating the child's or adult's needs and developing an individual care plan to meet them. The team may include a pediatrician, a parent, a guardian and the client, as appropriate, social worker, speech-language pathologist, physical or occupational therapist, nurse or special educationalist and child or adult psychologist.

§ 28-16-4. Assessment of needs of state's developmentally disabled population.

The developmental disabilities planning council, in order to comply with the provisions of 42 U.S.C. Section 6067, shall conduct a needs assessment to determine the number of developmentally disabled persons residing in New Mexico, the range and degree of severity of their disabilities, their present placement and services being received, their needs for services and the extent to which their needs are unserved or underserved. The assessment shall be completed within one year of the effective date of the Developmental Disabilities Community Services Act, and the findings shall be included in the state plan for developmental disabilities services. The assessment shall be repeated at least every two years.

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§ 28-16-5. Planning for community services for persons with developmental disabilities.

The developmental disabilities planning council shall coordinate, review and comment upon plans for services to persons with developmental disabilities developed by all major state agencies providing or funding services to persons with development disabilities based, to the greatest extent possible, upon the most recent needs assessment completed pursuant to Section 28-16-4 NMSA 1978. The health and environment department, the human services department, the vocational rehabilitation division of the state department of public education and the state department of public education shall each submit a plan for services to persons with developmental and other disabilities within a reasonable time to allow for meaningful coordination, review and comment by the development disabilities planning council. Each plan shall define and provide for such services as are required within the scope of each respective agency's applicable federal and state laws and regulations to achieve the goal of facilitating clients to maximize their potential and live as independently as possible in their own homes and communities and to achieve productive lives through involvement in integrated service settings.

§ 28-16-6. Authorization for provision of community-based services for the developmentally disabled.

Subject to the availability of appropriations provided expressly for this purpose, the department is authorized to enter into contracts with contractors capable of providing habilitation and other needed services to developmentally disabled clients in an efficient and cost-effective manner. Such programs and services as are contracted for shall be consistent with and in furtherance of the objectives of the state plan prepared pursuant to Section 5 [28-16-5 NMSA 1978] of the Developmental Disabilities Community Services Act.

§ 28-16-7. Standards for services.

The department shall promulgate regulations as are appropriate to ensure compliance with recognized minimum professional standards for services and the constitutional and statutory rights of clients. Contractors providing services shall comply with these regulations and standards as a condition of payment and continuation of contract.

§ 28-16-8. Admission and discharge of clients from developmental disabilities services purchased by the health and environment department.

Within one year of the effective date of the Developmental Disabilities Community Services Act, the department shall establish minimum requirements for admission, discharge, and withdrawal of clients from services funded by the department. Requirements shall include eligibility requirements for state-funded services and a system of ranking individuals by need for services. Such a system shall take into account the ability of developmentally disabled adults to give consent and to voluntarily participate in habilitation services. Persons who have been institutionalized shall be included in any system of ranking individuals by need. The department shall have the evaluation and case management authority to implement this system.

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§ 28-16-9. Programmatic review and monitoring compliance with regulations and contractual requirements.

Each state agency subject to the provisions of Section 28-16-5 NMSA 1978 shall establish standards for service and adopt regulations as appropriate. Each agency shall be responsible for insuring compliance with its standards and regulations.

§ 28-16-10. Determination of rates for payment for services.

The department shall analyze community-based provider actual costs and shall develop and implement by July 1, 1989 a unit of service reimbursement system based on these costs for the purchase of services for developmentally disabled persons. The system shall be coordinated with the state plan required by Section 28-16-5 NMSA 1978 so as to enable the department to estimate accurate funding requirements to be submitted annually to the legislature as part of the regular budget cycle. Contractors shall be required to submit records of units of service delivered, subject to monitoring by the department in accordance with Section 28-16-9 NMSA 1978.

§ 28-16-11. Independent status of contractors.

Each contractor that provides developmental disabilities services shall be considered to be an independent contractor and not an entity of state government.

§ 28-16-12. Developmental disabilities early childhood evaluation system.

The state shall have a timely, comprehensive, multi-disciplinary system for evaluating infants, toddlers and preschool age children suspected of having developmental delays. Evaluations for infants and toddlers shall address family service needs and shall include training capabilities to education community providers and parents in the understanding and application of the evaluations. This evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division of the health and environment department, the university of New Mexico's developmental disabilities team and the state department of public education.

§ 28-16-13. Disabled persons; information and referral system; coordination and continuation.

The developmental disabilities planning council, to coordinate information and referral services and eliminate the duplication of effort, shall provide information and referral services for the following state agencies and institutions that provide services to disabled persons, including;

A. the human services department;

B. the health and environment department;

C. the state department of public education and its division of vocational rehabilitation;

D. the New Mexico school for the deaf;

E. the New Mexico school for the visually handicapped; and

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F. Carrie Tingley hospital.

The agencies and institutions enumerated in this section shall, beginning with the seventy-seventh fiscal year, jointly provide for the continuation of the information and referral services through the developmental disabilities planning council. Each agency may transfer funds for this purpose to the council pursuant to a joint powers agreement or other appropriate arrangement. Provided, however, no agency or institution listed in this section shall be directed or required to provide more than ten thousand dollars ($10,000) in annual support of the information and referral system.

§ 28-16-14. Developmental disabilities planning council; creation.

There is created the "developmental disabilities planning council" in accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act, which shall be an adjunct agency as provided in the Executive Reorganization Act [28-16-1 to 28-16-12 NMSA 1978]. The council shall consist of no less than eighteen members, at least half of whom shall be persons with developmental disabilities or parents, immediate relatives or guardians of persons with developmental disabilities. The membership of the council shall include the secretary of health and environment, the secretary of human services and the director of the state agency on aging or their designees, the directors of the special education unit and the division of vocational rehabilitation of the state department of public education, the director of the state protection and advocacy system established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act, representatives of institutions of post-secondary education and representatives of local government agencies, non-government agencies or nonprofit groups concerned with services to the disabled. Members other than ex-officio members shall be appointed by the governor for terms of three years, except that the initial appointments by the governor shall be as follows:

A. one-third of the appointed members shall be appointed for terms of one year;

B. one-third of the appointed members shall be appointed for terms of two years; and

C. one-third of the appointed members shall be appointed for terms of three years.

§ 28-16-15. Developmental disabilities planning council; powers; duties.

A. The developmental disabilities planning council shall:

(1) act as a planning and coordinating body for persons with developmental disabilities;

(2) provide statewide systems advocacy for populations with developmental disabilities;

(3) work with appropriate state agencies to develop the developmental disabilities three-year plan as required by the federal Developmental Disabilities Assistance and Bill of Rights Act;

(4) monitor and evaluate the implementation of the state developmental disabilities plan;

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(5) to the maximum extent feasible, review and comment on all state plans which relate to programs affecting persons with developmental disabilities;

(6) submit to the secretary of the United States department of health and human services through the office of the governor such periodic reports as the secretary may request;

(7) advise the governor and the legislature about the needs of the developmentally disabled; and

(8) carry out any other activities authorized or required by the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act.

B. The developmental disabilities planning council is authorized to:

(1) award grants and enter into contracts to carry out its duties; and

(2) seek funding from sources other than the state.

§ 28-16-15.1. Development disabilities planning council; additional duty. (Effective until February 23, 1994.)

A. The developmental disabilities planning council, in coordination with the health and environment department and the human services department, shall develop a plan on the role of intermediate care facilities for the mentally retarded in the delivery of services to individuals with developmental disabilities. The plan shall contain:

(1) a methodology to determine the number of individuals with developmental disabilities who meet the level-of-care criteria for an intermediate care facility for the mentally retarded as defined by the human services department and the health and environment department;

(2) a description of the future role of intermediate care facilities for the mentally retarded in the developmental disabilities service system; and

(3) alternative proposals for controlling the growth of intermediate care facilities for the mentally retarded.

B. The developmental disabilities planning council shall present the plan developed in Subsection A of this section to the human services department and the health and environment department for approval and implementation on or before October 1, 1990.

§ 28-16-16. Developmental disabilities planning council; staff.

The developmental disabilities planning council shall employ an executive director, who is the administrative officer of the council. The executive director shall employ other necessary employees under the provisions of the Personnel Act.

§ 28-16-17. Developmental disabilities planning council; reports.

The developmental disabilities planning council shall submit reports on its preceding year's work to the governor and the legislature by December 1 of each year. The

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reports shall contain recommendations, if any, for legislation or other appropriate action.

§ 28-16-18. Developmental disabilities planning council; compensation.

Developmental disabilities planning council members shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

§ 43-1-3. Definitions.

As used in the Mental Health and Developmental Disabilities Code [this article]:

H. "developmental disability" means a disability of a person which is attributable to mental retardation, cerebral palsy, autism or neurological dysfunction which requires treatment or habilitation similar to that provided to persons with mental retardation;

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APPENDIX B

STANDARDS FOR EXCELLENCE

PROLOGUE

The success of New Mexico's schools depends upon a clear and shared vision of what students should know and be able to do as a result of formal schooling. In preparing future generations for successful lives, New Mexico's schools must create a learning environment and establish instructional programs to prepare students to be responsible citizens, to prepare students for post-secondary education, and to prepare students to obtain and maintain gainful employment.

It is the responsibility of New Mexico's schools to enable students to achieve to their full potential. Individual differences in interests, abilities, and aspirations must be recognized. Students must be provided opportunities to develop and utilize their unique talents and abilities to take risks, accept challenges, to respect themselves and others, and to develop the skills necessary to work cooperatively. Regardless of diverse learning rates and styles, all students can achieve meaningful goals, engage in lifelong learning, and through academic success, realize a positive self-concept.

The genuine pursuit of excellence in education requires that school communities periodically examine and assess all aspects of their educational program with a view toward identifying ways in which existing philosophies, standards, and competencies might be further strengthened and made more responsive to the evolving needs of both students and society. Therefore, we see Standards for Excellence and New Mexico competencies as dynamic, living documents subject to review and change consistent with the results of systematic institutional self-examination.

VISION OF EXCELLENCE

The pursuit of excellence in education begins with the fundamental belief that the ability to learn is an intrinsic quality.

The purpose of New Mexico schools is to enable students to acquire knowledge, skills, and attributes essential to function effectively as individuals and as members of society, the nation, and the world. In the pursuit of excellence, schools must create opportunities for students to understand the relationships that exist among diverse cultures with common needs and the variety of ways in which those needs are met.

Schools in partnership with parents, families, and communities assure that students learn democratic principles, attitudes, and attributes that produce responsible decisions of benefit to themselves and the pluralistic society of the present and the future.

Recognizing the need to respond to the complexity of our rapidly changing world, and through a commitment to a better educated citizenry, the New Mexico State Board of Education hereby promulgates these Standards for Excellence.

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STUDENT OUTCOMES

LITERACY

New Mexico students are successful, productive members of society as demonstrated by:

a. A knowledge, understanding, and application of the structure and use of the English language as well as other languages;

b. A knowledge, understanding, and practical application of technology, science, mathematics, social studies, the humanities, and the practical arts and their interconnections through the modes of reading, writing, observing, speaking, listening, movement, and the arts.

c. Creative and higher order thinking skills and personal attitudes and attributes leading to ethical decision-making to meet the challenges of life;

d. Integrating previous experiences and knowledge with new experience and knowledge;

e. Identifying, accessing, evaluating, and utilizing information;

f. A knowledge and understanding of the social value, dignity, and necessity of earning a living as reflected in:

   * Pride in a job well done;
   * Dependability;
   * Willingness to pursue education and vocational training; and
   * Employability skills;

g. Working cooperatively and assuming responsibilities as members of a team;

h. Managing personal and financial resources appropriately;

i. An understanding of the historical evolution of the democratic principles of the constitutional government of the United States;

j. An application of the principles and processes of our representative form of government and understanding how they affect individuals, communities, tribes, states, nations, and the world;

k. An understanding of the differences among various forms of government; and

l. An understanding and application of the basic elements of health maintenance.

STUDENT OUTCOMES

ATTITUDES AND ATTRIBUTES

New Mexico students are successful, productive members of society as demonstrated by:

a. A desire to learn and perform at their full potential;

b. A positive self-concept as evidenced by constructive expression of one's own physical, emotional, and mental uniqueness, capabilities, strengths, talents, goals, and aspirations.

c. A respect for self and others, based on the recognition of individual similarities and differences, opinions, cultures, and concerns of others;

d. A respect for the authority, responsibilities, and privileges protected by the United States Constitution and Bill of Rights;

e. An appreciation of the world's literature, art, music, and cultural attributes, particularly those that make our state and nation great and unique;

f. Personal and interpersonal skills necessary to function successfully as responsible members within families, workplace, communities, tribes, nations, and the world;

g. A willingness to strive towards the attainment of positive personal and academic goals;

h. Assuming personal responsibility for shaping their own future;

i. Making decisions which promote good health; and

j. A respect for life and the environment based on the recognition that all life is interdependent.

COMMITMENT TO EXCELLENCE

EPILOGUE

Exemplary educational outcomes for students envisioned in this document will result only if programs are made available for the professional growth and development of teachers and staff and if learning environments are created and sustained which address the varying needs of students.

As stated in the prologue, the genuine pursuit of excellence in education requires that school communities periodically examine and assess all aspects of their educational program with a view toward identifying ways in which existing philosophies, standards, and competencies might be further strengthened and made more responsive to the evolving needs of both students and society. The State Board of Education sees the Standards for Excellence and New Mexico competencies as dynamic, living documents subject to review and change, consistent with the results of systematic institutional self-examination.

The expectation that each student can and should achieve essential student outcomes established by the State Board of Education and can be considered an educated citizen requires that all constituents of the educational community embody the Standards for Excellence. By sharing this vision of excellence, educators, parents, citizens, community organizations, employers, governmental institutions, and others can commit to excellence by embracing the correlates of effective schools as defined below:

Instructional Leadership

In collaboration with staff, parents, students, and community, the school leadership defines the school's mission and frames the goals. Effective leaders ensure that effective school characteristics are present, promoted, and improved upon.

Safe and Orderly School Climate

Schools must provide an orderly, purposeful, and safe environment with an atmosphere that is conducive to teaching and learning. Physical facilities are kept clean and made attractive with repairs made promptly.

High Student Expectations

Teachers and other members of the school community believe all students can learn and enthusiastically accept the challenge to teach them. High expectations are communicated to students and parents, and programs are provided to enable students to achieve these expectations.

Instructional Focus

Schools must establish a clear instructional focus which reflects the purpose and goals of the institution. The focus must be developed, understood, and shared by staff, students, parents, business and government leaders, and others in the community.

Assessing Progress

Ongoing assessment and evaluation of students, programs, and staff enables schools to determine whether their goals are being met and provides a basis for revision when indicated to better address the needs of students. Evaluation of the school's effectiveness should be based on student outcomes. The use of multiple forms of assessment and evaluation can generate a wealth of information which can be applied to program improvement.

Parent and Community Support

Partnerships with families, business, and the larger community form the basis for success in achieving the goals of the school. Through such partnerships, a common mission is established and the responsibility for achieving the mission is shared by the total educational community.

As we embark on the Pursuit for Excellence for New Mexico schools, we must know that none of us is acting alone. Whether students, educators, parents, employers, citizens, government employees, or agency representatives, we must work together if we are to achieve excellence. We must all be initiators as well as supporters. We must become partners committed to a common cause: the future of the young people of New Mexico. The youth of today are our most valuable resource. They deserve an excellent education that will ensure their opportunities for a prosperous and productive adulthood. As we invest in the lives of our students, we invest in the future: theirs and ours.

MODEL OF EDUCATIONAL EVALUATION

Standards for Excellence require that schools and communities continuously examine and assess all aspects of the educational program with a view toward identifying ways in which existing philosophies, standards, and competencies might be further strengthened and made more responsive to the evolving needs of both students and the society in which they live. Models for the evaluation of educational programs must first promote the changes that have immediate and direct benefits for student learning.

Evaluation must be based on appropriate assessments which provide the information needed by students, parents, teachers, school administrators, and decision and policy makers to nurture the learning and motivation of students. To be able to make these critical decisions, the assessment must demonstrate a direct correlation between the purpose of the assessment and the type of assessment used.

The Model of Educational Evaluation is an interactive model of educational evaluation based on appropriate assessments which can be used for both internal and external evaluations. This model includes five dimensions which demonstrate the inter-relationships among student performance, teacher performance, administrator performance, local school boards, and parents' and community involvement. Each dimension delineates the responsibilities of students, teachers, administrators, local school boards, and parents and the community.

Student Dimension:	Specifies that students are responsible for learning.
Teacher Dimension:	Specifies that teachers are responsible for providing the best instruction and environment for learning to occur.
Administrator Dimension:	Specifies that administrators are responsible for managing resources which foster student learning.
Local School Board Dimension:	Specifies that local school boards are responsible for setting policies which reflect the desires of the community and which foster student learning.
Parent/Community Dimension:	Specifies that parents and communities function as an integral partnership in the entire educational process.

Each dimension provides processes which are based on competencies and goals. The quality of the products (student performance) determines whether the processes used to reach goals were effective. Appropriate assessments are used to determine if and to what extent goals are/were met. The analysis and interpretation of assessment results are conducted to explain factors which either promote or hinder student learning and positive growth. These results are used to plan for future implementation which promotes student learning.

The Model of Educational Evaluation invites a radical reform in the uses and processes of educational assessment. This requires refocusing program evaluation from educational processes to student outcomes and redesigning assessments based on the Standards for Excellence.

This model recognizes the importance of a partnership in learning which includes students, their families, teachers, administrators, local school boards, and communities as active participants. Parent and community involvement is essential for attaining Standards for Excellence.

This model will serve as a framework for statewide, district, and school evaluations. The focus on student outcomes necessitates appropriate assessments in the classrooms or learning environments. The importance of best practices in instruction to promote student learning and positive development requires appropriate assessments for teacher evaluation. The essential support of school management which promotes student learning and effective instruction requires assessments which provide the information needed for improving the educational program and the attainment of the Standards for Excellence.

STANDARDS FOR EXCELLENCE

"Prologue"
"Vision of Excellence"
"Expectations of Schools"
"Student Outcomes"
"Epilogue"

EVALUATING ATTAINMENT OF STANDARDS

Student Competencies/Benchmarks
Expectations of Schools

RESOURCES

COMPLIANCE MANUAL

Instruction, Support Services, and Personnel
Business and Finance
Special Education
Vocational Education

TECHNICAL ASSISTANCE MANUALS

(Guidelines for Achievement/Compliance)

BEST PRACTICES MANUAL

(Exemplary Program Design)

ACCREDITATION

Implementation Guide

APPENDIX C

CHAPTER 5

Special Education

NEW MEXICO STATE DEPARTMENT OF EDUCATION

STANDARDS FOR EXCELLENCE

COMPLIANCE MANUAL

ADOPTED BY THE NEW MEXICO STATE BOARD OF EDUCATION
SANTA FE, NEW MEXICO
AUGUST 27, 1992

SBE Regulation 90-2
Amendment 2

The New Mexico
State Department of Education's
VISION STATEMENT

"The New Mexico State Department of Education believes the education of all students must become the mission for all New Mexicans. We believe education must challenge all students to reach their potential."

PART I - CHILDREN WITH DISABILITIES

INTRODUCTION

PHILOSOPHICAL FOUNDATIONS

Foremost to the delivery of service to children with disabilities in New Mexico is the recognition of five philosophical foundations adhered to by the New Mexico State Board of Education (NMSBE) and the New Mexico State Department of Education (NMSDE):

A) Equal Access - THE NMSBE AND THE NMSDE ARE COMMITTED TO THE PRINCIPLE OF EQUAL ACCESS TO A FREE APPROPRIATE PUBLIC EDUCATION FOR ALL CHILDREN, REGARDLESS OF VARIANCE IN THEIR ABILITY TO PARTICIPATE IN EDUCATION EXPERIENCES. CHILDREN WITH DISABILITIES CANNOT BE GUARANTEED EQUAL ACCESS TO AN APPROPRIATE EDUCATION WITHOUT SPECIALLY DESIGNED INSTRUCTION, IN ADDITION TO PROGRAMS AND SERVICES PROVIDED TO ALL CHILDREN;

B) Right to Service - THIS PRINCIPLE ASSERTS THE RIGHT OF A CHILD WITH A DISABILITY TO RECEIVE THE SERVICES WHICH PROMOTE GROWTH TOWARDS INCREASED INDEPENDENCE AND COMPETENCE. AN ULTIMATE GOAL FOR ALL PERSONS IS TO LIVE AS FULL CONTRIBUTING MEMBERS OF SOCIETY. SERVICES FOR CHILDREN WITH DISABILITIES MUST BE DIRECTED TOWARD THIS GOAL;

C) Respect for Human Dignity - IT IS THE INTENT OF THE NMSBE AND THE NMSDE THAT CHILDREN WITH DISABILITIES BE AFFORDED THE SAME DEGREE OF DIGNITY AND RESPECT AFFORDED OTHER CHILDREN AND MAY BE PROVIDED THE OPPORTUNITY FOR FULL INCLUSION, AS APPROPRIATE.

D) Least Restrictive Environment - THIS PRINCIPLE DEMANDS THAT EACH CHILD WITH DISABILITIES RECEIVES APPROPRIATE SERVICES IN ENVIRONMENTS WHICH PROMOTE INTERACTION WITH PEERS WHO ARE NOT DISABLED TO THE MAXIMUM EXTENT APPROPRIATE TO MEET THE NEEDS OF THE CHILD. LEAST RESTRICTIVE ENVIRONMENT IS AN ESSENTIAL PRINCIPLE OF THESE

RULES IF EACH CHILD IS TO ACHIEVE SELF-SUFFICIENCY AS A CONTRIBUTING MEMBER OF SOCIETY; AND

E) Child Focused/Family Centered Decisions - THIS PRINCIPLE IS THE CENTRAL FOCUS OF SPECIAL EDUCATION. THE SPECIAL EDUCATION COMPLIANCE MANUAL REFLECTS THE ESSENTIAL PREMISE THAT ALL DECISIONS RELATED TO A CHILD WITH DISABILITIES ARE MADE BY TEAMS INCLUDING FAMILIES WHICH WORK TOGETHER TO DETERMINE, IMPLEMENT AND EVALUATE SERVICES BASED ON THE NEEDS OF A CHILD AND THE FAMILY.

GUIDING PRINCIPLES

The rules which are promulgated herein are consistent with five guiding principles. These guiding principles require that the rules established must:

A) FOCUS ON THE NEEDS OF A CHILD AND THE FAMILY;

B) GUARANTEE THAT SPECIAL EDUCATION AND RELATED SERVICES ARE DELIVERED TO APPROPRIATELY IDENTIFIED CHILDREN WITH DISABILITIES AND THAT THOSE SERVICES ARE DELIVERED IN THE LEAST RESTRICTIVE ENVIRONMENT APPROPRIATE TO EACH CHILD'S IDENTIFIED NEEDS;

C) BE PREDICATED ON THE ULTIMATE GOAL OF PREPARING CHILDREN WITH DISABILITIES FOR THEIR FUTURE ENVIRONMENTS;

D) COMPLY WITH CURRENT FEDERAL AND STATE LAWS AND IMPLEMENTING REGULATIONS; AND

E) PROMOTE THE COOPERATION WITHIN AND ACROSS ALL AGENCIES WITHIN THE STATE WHICH HAVE RESPONSIBILITIES FOR SERVING CHILDREN WITH DISABILITIES AND THEIR FAMILIES.

POLICY AND PURPOSE

It is the policy of the NMSBE to promulgate the following rules to assist public agencies in appropriately identifying and serving children with disabilities. The purpose of these rules is to (a) insure that all children with disabilities have available to them a free appropriate public education which includes special education and related services to meet their unique needs; (b) to insure that the rights of children with disabilities and their parents are protected; (c) to assist public agencies to provide for the education of all children with disabilities and (d) to evaluate and insure the effectiveness of efforts to educate those children.

The requirements of these rules are binding on each public agency that has direct or delegated authority to provide special education and related services in New Mexico regardless of whether that agency is receiving funds under the Individuals with Disabilities Education Act (IDEA). Each public agency in New Mexico is responsible for insuring that the rights and protections under these rules are given to children referred to or placed in private schools and facilities by that public agency.

SECTION I - DEFINITIONS

(A) ADAPTIVE BEHAVIOR: means the effectiveness or degree with which the child meets the standards of personal independence and social responsibility expected of children of comparable age and cultural group.

(B) ASSISTIVE TECHNOLOGY DEVICE: means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of children with disabilities.

(C) ASSISTIVE TECHNOLOGY SERVICE: means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. The term includes: (1) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; (2) purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities; (3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices; (4) coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing IEPs and rehabilitation plans and programs; (5) training or technical assistance for a child with disabilities or, where appropriate, the family of a child with disabilities; and (6) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of children with disabilities.

(D) CHILDREN WITH DISABILITIES: means those school-aged children evaluated in accordance with SECTION III of these rules, IDEA and its implementing regulations as being autistic, deaf, deaf-blind, hard of hearing, intellectually disabled, multi-disabled, orthopedically impaired, other health impaired, seriously emotionally/behaviorally disturbed, specific learning disabled, speech-language impaired, traumatic brain injured or visually impaired, who because of those impairments need special education and related services. The terms used in this definition are defined as follows:

(1) Autistic: means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects educational performance. Characteristics of autism include -- irregularities and impairment in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines and unusual responses to sensory experiences. The term does not include children with characteristics

of the disability serious emotional/behavioral disturbance, as defined paragraph (D)(9) of this section.

(2) Deaf: means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affect a child's educational performance.

(3) Deaf-Blind: means concomitant hearing and visual impairments, which adversely affect a child's educational performance, the combination of which produces such significant communication and other developmental and educational needs that these needs cannot be accommodated by services solely for deal or blind children.

(4) Hard of Hearing: means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of deaf, as defined in paragraph (D)(2) of this section.

(5) Intellectually Disabled: means significantly subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and is manifested during the developmental period adversely affecting a child's educational performance.

(6) Multi-Disabled: means concomitant impairments such as those defined in this section, which adversely affect a child's educational performance, the combination of which produces such significant educational needs that these needs can not be accommodated by services solely for one of the impairments. This term does not include children with deaf-blindness.

(7) Orthopedically Impaired: means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease and impairments from other causes.

(8) Other Health Impaired: means having limited strength, vitality or alertness due to chronic or acute health problems including, but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia or diabetes which adversely affect a child's educational performance.

(9) Seriously Emotionally/Behaviorally Disturbed: means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree which adversely affects educational performance: (a) an inability to learn which cannot be explained by intellectual, sensory or other health factors; (b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (c) inappropriate types of behavior or feelings under normal circumstances; (d) a general pervasive mood of unhappiness or depression; or (e) a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes children who are

schizophrenic. The term does not include children who are socially maladjusted unless it is determined that they also are seriously emotionally/behaviorally disturbed.

(10) Specific Learning Disabled: means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an inability to listen, think, speak, read, write, spell or to perform mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural or economic disadvantage.

(11) Speech-Language Impaired: means a communication disorder such as stuttering, impaired articulation, a language impairment or a voice impairment which adversely affects a child's educational performance.

(12) Traumatic Brain Injured: means an injury to the brain caused by an external physical force or by an internal occurrence such as stroke or aneurysm, resulting in total or partial functional disability or psycho-social maladjustment that adversely affects educational performance. The term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgement; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(13) Visually Impaired: means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes children who are partially seeing and blind.

(E) CONSENT: means that the child's parent(s): (1) has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication as appropriate; (2) understands and agrees in writing to the carrying out of the activity for which his/her consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and (3) understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(F) CONSENSUS: means reaching general agreement through open communication, understanding opposing views, consideration of alternatives in an open and fair environment and shared commitment to the decision reached. The spotlight is on unanimous commitment instead of unanimous agreement.

(G) DESTRUCTION: means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(H) EDUCATIONAL RECORDS: means the type of records covered under the definition of "educational records" in the Family Educational Rights and Privacy Act, (FERPA).

(I) EVALUATION: means procedures used in accordance with these rules, IDEA and its implementing regulations to determine whether a child is disabled and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with a child and does not include basic tests administered to or procedures used with all children in a school, grade or class.

(J) FREE APPROPRIATE PUBLIC EDUCATION (FAPE): means special education and related services which: (1) are provided at public expense under public supervision and direction, and without charge to parents; (2) meet the rules of the NMSBE and the NMSDE, including the requirements under IDEA; (3) include preschool, elementary school or secondary school education in New Mexico; and (4) are provided in conformity with an individualized education program (IEP) which meets the requirements of these rules, IDEA and its implementing regulations.

(K) INDEPENDENT EDUCATIONAL EVALUATION: means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question.

(L) INDIVIDUALIZED EDUCATION PROGRAM (IEP): means a written statement for a child with a disability(ies) that is developed and implemented in accordance with these rules, IDEA and its implementing regulations. The IEP serves as a communication vehicle between parents and school personnel and enables them as equal participants to decide jointly what the child's needs are, what services will be provided to meet those needs, what the anticipated outcomes may be and how the child's progress toward meeting the projected outcomes will be evaluated. For preschool children with disabilities, an Individualized Family Service Plan (IFSP), as defined in Part H of IDEA, may be utilized as long as the IFSP meets the content requirements of an IEP defined in Section IV, Subsection B of these rules.

(M) LEAST RESTRICTIVE ENVIRONMENT (LRE): means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled within the most inclusive environment. Special classes, separate schooling or other removal of children with disabilities shall occur only when the nature or severity of the disability is such that education in regular classes or other natural environments with the use of supplementary aids and services cannot be achieved satisfactorily.

(N) MULTIDISCIPLINARY EVALUATION/DECISION MAKING: means a process of evaluation and decision making by consensus of a multidisciplinary team.

(O) MULTIDISCIPLINARY TEAM: means a group of individuals who have information relative to a child which is utilized to: (1) determine a child's present levels of educational performance; and (2) make educational decisions about the child.

(P) NATIVE LANGUAGE: means the language normally used by the child with a disability, or in the case of the child's parent(s), the language normally used by the parents. These rules do not prevent the following means of communication: (1) in all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the child's parents if there is a difference between the two; and (2) if a child is deaf, blind or has no written language, the mode of communication would be that normally used by the child (such as sign language, braille or oral communication).

(Q) PARENT: means a parent, a guardian, a person acting as a parent of a child or a surrogate parent who has been appointed in accordance with these rules, IDEA and its implementing regulations. The term includes persons acting in the place of a parent such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare. The term does not include the State if the child is a ward of the State under the laws of New Mexico.

(R) PARTICIPATING AGENCY: means any agency or institution which collects, maintains or uses personally identifiable information or from which information is obtained under these rules. It also means a state or local agency, other than the public agency responsible for the student's education, that is financially and legally responsible for providing transition services to the student.

(S) PERSONALLY IDENTIFIABLE: means that information which includes: (1) the name of the child, the child's parents, or other family member; (2) the address of the child; (3) a personal identifier, such as the child's social security number or student number; or (4) a list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(T) PHYSICAL EDUCATION: means the development of (1) physical and motor fitness; (2) fundamental motor skills and patterns of movement; and (3) skills in aquatics, dance and individual and group sports, including intramural and lifetime sports.

(U) PREREFERRAL INTERVENTION: means the systematic development and implementation of strategies by building level teams to provide educational and behavioral interventions designed to enable children who are "at risk" for school failure to succeed within the general education setting. Prereferral intervention strategies and results are included as documentation if students are referred for multidisciplinary evaluation.

(V) PRESCHOOL CHILDREN WITH DISABILITIES: means children ages three and four who are in need of special education and related services because of a significant delay or deficit in one or more areas of development including cognitive, physical, motor, language, social/emotional, self-help, vision or hearing, or who have been classified according to Section I(D) of these rules.

(W) PRIVATE SCHOOL CHILDREN WITH DISABILITIES: means children with disabilities enrolled in private schools or facilities other than children with disabilities who have been placed or referred to a private school or facility by a public agency.

(X) PUBLIC AGENCY: means the NMSDE, local education agencies, regional center cooperatives, state supported public programs and any other political subdivision of the State of New Mexico which are responsible for providing education to children with disabilities.

(Y) PUBLIC EXPENSE: means that a public agency either pays for the full cost of the location, evaluation, identification, delivery of services or FAPE of a child with a disability or insures that the location, evaluation, identification, delivery of services or FAPE of a child with a disability is otherwise provided at no cost to the parent, consistent with these rules, IDEA and its implementing regulations.

(Z) QUALIFIED: means that a service provider has met NMSDE approved or recognized certification, licensing, registration or other comparable requirements approved by the NMSDE which apply to the area in which s/he is providing special education and/or related services.

(AA) RELATED SERVICES: means transportation and such developmental, corrective and other supportive services determined during the IEP meeting as required for a child with a disability to benefit from special education. Such services include audiological services, counseling services, early identification and assessment of disabilities in children, interpreter services, medical services for evaluation purposes, orientation and mobility services, parent counseling and training, occupational and physical therapy, psychological services, recreation, including therapeutic recreation, school health services, social work services and speech-language pathology. For age appropriate children with disabilities, rehabilitation counseling also would be considered a related service. These related services are not exhaustive and may include other developmental, corrective or supportive services (such as artistic and cultural programs and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. The terms used in this definition are defined as follows:

(1) Audiology Services: means service provided by a qualified individual and includes:

(a) identification of children with hearing loss; (b) determination of the range, nature and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (c) provision of habilitative activities such as language habilitation, auditory training, speech reading, hearing evaluation and speech conservation; (d) creation and administration of programs for prevention of hearing loss; (e) counseling and guidance of children with disabilities, parents and teachers regarding hearing loss; and (f) determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.

(2) Counseling Services: means service provided by qualified social workers, psychologists, guidance counselors or other qualified personnel.

(3) Early Identification: means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Interpreter Services: means service provided by a qualified individual which provides visual cuing of orally delivered information during curricular or non-curricular activities.

(5) Medical Services: means evaluation service provided by a licensed physician to assist in determining a child's medically related disability which results in the child's need for special education and related services.

(6) Orientation and Mobility Services: means service provided by a qualified individual which provides for the development of auditory and kinesthetic awareness, initiation and development of mobility skills and the use of low vision, tactile and auditory skills to enhance a child's ability to move and function effectively in the environment.

(7) Occupational Therapy: means service provided by a qualified individual which: (a) improves, develops or restores functions impaired or lost through illness, injury or deprivation; (b) improves ability to perform tasks for independent functioning when functions are impaired or lost; (c) prevents, through early intervention, initial or further impairment or loss of function; (d) provides sensory integration, motor patterns, activities of daily living and increased awareness of the external environment; and (e) identifies and adapts equipment, including assistive technology devices and services involved in the development of functional behaviors.

(8) Parent Counseling and Training: means assisting parents in understanding the special needs of a child with a disability and providing parents with information about human development.

(9) Physical Therapy: means service provided by a qualified individual which: (a) prevents increased disability; (b) promotes the development of compensatory motor skills; and (c) assists in the identification, adaptation and adjustment of assistive technology devices.

(10) Psychological Services: means service provided by qualified individual(s) and includes: (a) administering psychological and educational tests and other assessment procedures; (b) interpreting assessment results; (c) obtaining, integrating and interpreting information about child behavior and conditions relating to learning; (d) consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews and behavioral evaluations; and (e) planning, managing and implementing a program of psychological services, including psychological counseling for children with disabilities and their parents.

(11) Recreation: means: (a) assessment of leisure function; (b) therapeutic recreation services; (c) recreation programs in schools and community agencies; and (d) leisure education.

(12) Rehabilitation Counseling Services: means services provided by a qualified rehabilitation counseling professional, in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(13) School Health Services: means services provided by a school nurse or other qualified person.

(14) Social/Emotional/Behavioral Services: means counseling services, psychological services and social work services.

(15) Social Work Services: means services provided by a qualified individual and includes: (a) preparing a social or developmental history on a child with a disability; (b) group and individual counseling with the child and family; (c) working with those problems in a child's living situation (home, school community) that affect the child's adjustment in school; and (d) mobilizing school and community resources to enable the child to receive benefit from his or her educational program.

(16) Speech-Language Services: means services provided by a qualified individual and includes: (a) identification of children with speech and/or language impairments; (b) evaluation and appraisal of specific speech and/or language impairments; (c) referral for medical or other professional attention necessary for the habilitation of speech and/or language disorders; (d) provision of speech and language services for the habilitation or prevention of communicative disorders; and (e) counseling and guidance of parents, children with disabilities and teachers regarding speech and language disorders.

(17) Transportation: means: (a) travel to, from and between schools and other educational

environments; (b) travel in and around school buildings and other educational environments; and (c) specialized equipment such as special or adapted buses, lifts and ramps, if required to provide special transportation for a child with a disability.

(AB) SCHOOL-AGED CHILDREN WITH DISABILITIES: means children ages five through twenty-one who have been determined to be in need of special education consistent with these rules.

(AC) SPECIAL EDUCATION: means: (a) specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability including classroom instruction, instruction in physical education, home instruction, and instruction in state supported public programs, hospitals and institutions; (b) the term includes speech-language pathology and other related services consisting of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under these rules; (c) the term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability; (d) the term also includes physical education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of child with a disability; (e) a child is not disabled unless s/he needs special education; and (f) if a child does not need special education, there can be no related services and the child (because not disabled) is not covered under these rules nor IDEA nor its implementing regulations.

(AD) STATE SUPPORTED PUBLIC PROGRAMS: means state schools, state hospitals and Youth Authority Programs.

(AE) SUPPLEMENTARY AIDS AND SERVICES: means those assistive materials, equipment, processes and/or persons which must be considered or implemented in determining the least restrictive environment for the child with disabilities allowing the child to be served in the most appropriate inclusive/integrated educational setting.

(AF) TRANSITION SERVICES: means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The listed activities in the definition of transition services are not exhaustive, but are only examples of different types of post-school activities.

SECTION II - PUBLIC EDUCATION AGENCY POLICY, PROCEDURES AND ASSURANCES

(A) CHILD IDENTIFICATION- Each public agency must publish procedures which insure that all children, including children in all public and private agencies and institutions residing within the jurisdiction of the public education agency who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(B) CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION- Each public agency must publish policies and procedures which insure that the criteria in Section III, Subsection E of these rules are met.

(C) EXTENDED SCHOOL YEAR: Each public agency must publish procedures to make extended school year service(s) available to those children with disabilities who meet eligibility criteria. The purpose of an extended school year is to prevent or slow severe skill regression caused by an interruption of special education service(s) during extended periods when school is not in session. The purpose is not to enhance the present levels of educational performance exhibited by children with disabilities at the end of the regular school year. The need for extended school year service(s) is based on a construct of skill regression and a child's limited capacity for recoupment. An extended school year may be provided only when it is determined that a child might regress to such an extent in a critical skill area that recoupment of such skill loss would require an unusually long period of time to recoup or make it unlikely or impossible to recoup the present level of educational performance. When it is determined by a multidisciplinary team that a child is in need of extended school year service(s), the service(s) will be proposed at no cost to parents. Extended school year service(s) will be provided only under the auspices of an IEP. Eligibility for extended school year service(s) will be determined on an individual-by-individual basis. Extended school year guidelines and practices will not be invoked which have an effect of considering children with disabilities as an exceptional class.

(D) FULL EDUCATIONAL OPPORTUNITY GOAL--TIMETABLE - Each public agency must establish: (1) a goal of providing full educational opportunity to all children with disabilities birth through age twenty-one (21) and (2) a detailed timetable for accomplishing the goal.

(E) FACILITIES, PERSONNEL AND SERVICES - Each public agency must publish a description of the kind and number of facilities, personnel and services necessary to meet the Full Educational Opportunity Goal required in Section II(D) of these rules.

(F) PERSONNEL DEVELOPMENT - *Each public agency must publish procedures for the* implementation and use of the Comprehensive System of Personnel Development established by the NMSDE in its IDEA State Plan.

(G) PARENT INVOLVEMENT - Each public agency must publish procedures to insure that, in meeting the Full Educational Opportunity Goal required in Section II(D), the public agency makes provision for participation and consultation with parents or guardians of children with disabilities.

(H) PARTICIPATION IN GENERAL EDUCATION - Each public agency must publish procedures to insure that to the maximum extent appropriate and consistent with the Least Restrictive Environment requirements in SECTION III Subsection D that the public agency provides special education services to enable children with disabilities to participate in general educational programs. Each public agency must describe: (1) the types of alternative placements that are available for children with disabilities; and (2) the number of children with disabilities within each category of disability who are served in each type of delivery of services model.

(I) EXCESS COST - Each public agency must provide assurance satisfactory to the NMSDE that the local public agency uses funds provided under IDEA only for costs which exceed state and local revenue and which are directly attributable to the education of children with disabilities.

(J) NONSUPPLANTING - Each public agency must provide assurance satisfactory to the NMSDE that the public agency uses funds provided under IDEA to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant those State and local funds. To meet the requirement in the proceeding statement: (1) the total amount or average per capita amount of State and local funds budgeted by the public agency for expenditures in the current fiscal year for the education of children with disabilities must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of children with disabilities in the most recent proceeding fiscal year for which the information is available. Allowance may be made for: (a) decreases in enrollment of children with disabilities; and (b) unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and (2) the public agency must not use IDEA funds to displace State and local funds for any particular cost. (3) The intent of this requirement is to insure that IDEA funds are used to increase State and local efforts and are not used to take their place. Compliance with this requirement is judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to children with disabilities.

(K) COMPARABLE SERVICES - (1) Each public agency must provide assurance satisfactory to the NMSDE that the public agency meets the requirements of Comparable Services stated herein; (2) a public agency may not use funds under IDEA to provide services to children with disabilities unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other children with disabilities in that public agency; and (3) each public agency shall maintain records which show that the agency meets the requirement in statement (2) of this paragraph.

(L) INDIVIDUALIZED EDUCATION PROGRAM - Each public agency must publish procedures to assure that the public agency complies with rules in SECTION IV Subpart B - Individualized Education Programs.

(M) PROCEDURAL SAFEGUARDS - Each public agency must publish the procedural safeguards which meet the requirements of Section III of these rules.

(N) USE OF IDEA FUNDS- Each public agency must describe in its local IDEA application how the public agency will use the funds under IDEA during the next school year.

(O) USE OF IDEA-B FUNDS ASSURANCES: (1) The public agency assures it will use IDEA-B funds only for excess costs which are directly attributable to the education of children with disabilities; (2) the public agency assures it will use IDEA-B funds to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities and in no case supplant State and local funds; and (3) the public agency assures it will not use IDEA-B funds to provide services to children with disabilities unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other children with disabilities in the public agency.

(P) DELIVERY OF SERVICES PROCEDURES: Each public agency insures that multiple criteria are used and considered in the delivery of services decisions of a child and that the delivery of services decision is made by a group of people in conformity with least restrictive environment regulations.

(Q) FREE APPROPRIATE PUBLIC EDUCATION: Each public agency makes a free appropriate public education available to all children with disabilities residing within its jurisdiction who need special education.

(R) EACH PUBLIC AGENCY MUST PUBLISH ASSURANCES WHICH COMPLY WITH THE FOLLOWING: 1) Title VI of the Civil Rights Acts of 1964, as amended, 42 U.S.C. 20000d et. seq., which prohibits discrimination on the basis of disability race, color or national origin in programs and activities receiving federal financial assistance. (2)

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance. (3) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 794, which prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance. (3) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et. seq., which prohibits discrimination on the basis of sex in educational programs and activities receiving federal financial assistance. (4) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et. seq., which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. (5) Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating on the basis of race, color, religion, sex, disability or national origin in hiring, promotion, and other employment policies. (6) Privacy Act of 1974 (PL 93-579) when applicable. (7) Record Retention: (a) The public agency shall maintain United States Department of Education project records for five years after the completion of the activity for which the funds are used. However, if records are being used prior to the five year period due to any litigation, claim, audit or other actions, the records shall be retained until all issues have been resolved. (b) The retention period for the records of each fund period starts on the day the final expenditure reports are submitted to the United States Department of Education or the United States Department of Agriculture by the New Mexico State Department of Education. Also, if the public agency use United States Department of Agriculture records for the United States Department of Education programs, record retention for those records will be five (5) years. (c) The records shall be made available to the state agency, federal government or its designees. (8) The public agency shall repay to the New Mexico State Department of Education with nonfederal funds or from federal funds for which no accountability is required to the federal government, any amounts which the United States Department of Agriculture or the United States Department of Education orders the State of New Mexico to repay because of the public agencies failure to comply with applicable statutes, regulations and requirements. The public agency shall further repay to the New Mexico State Department of Education with nonfederal funds or from federal funds for which no accountability is required to the federal government any amounts determined by the New Mexico State Department of Education to have been misspent or misapplied because of the applicant's failure to comply with applicable statutes, regulations and requirements. (9) The Audit Act, Section 12-6-1, et. seq. NMSA, 1978. For inventory purposes, as it relates to federally funded programs, the lower amount of the state or federal requirement for the listing of chattels and equipment shall apply. (10) The State of New Mexico Procurement Code Section 13-1-28-, et. seq., NMSA, 1978 and shall further comply with any applicable federal purchasing requirements. (11) The New Mexico State Board of Education Audit Resolution Process. Regulation #88-8. (12) The Single Audit Act of 1984. (PL 98-502). Each entity that receives $25,000 or more in Federal Financial Assistance shall have an audit made for such fiscal year in accordance with this Act. Agencies not included under the Audit Act requirement shall submit a copy of the audit report directly to the New Mexico State Department of Education. Furthermore, each entity must permit independent auditors to have access to records and financial statements as necessary to comply with the Act. (13) The Davis-Bacon Act (40 U.S.C. 276) when applicable. (14) The Hatch Act (5 U.S.C. 1501 et. seq.,) which limits the political activity of public employees involved in programs supported by federal funds. (15) The Presidential Executive Order 11246 which prohibits discrimination by government contractors on the basis of race, color, religion, sex, disability or national origin on construction contracts for $10,000 or more. (16) The public agency assures that: (a) The public agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans and applications. (b) The control of funds provided by the public agency under each program and title to property acquired with those funds will be in a public agency and that a public agency will administer those funds and property. (c) Will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for federal funds paid to that agency under each program. (d) The public agency will: (i) Make reports to the state agency or board and the secretary as may reasonably be necessary to enable the state agency or board and the secretary to perform their duties. (ii) Maintain records, including the records required under Section 437 of General Education Provision Act, and provide access to those records as the state agency or board or the secretary decides are necessary to perform their duties. (e) The public agency will provide reasonable opportunities for the participation by teachers, parents and other interested agencies, organizations, and children in the planning for and operation of each program. (f) Any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public. (g) The public agency in developing any project involving construction shall: (i) Not be inconsistent with overall State plans for the construction of school facilities. (ii) In developing plans consideration should be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under Section 794 of Title 29 in order to ensure that facilities constructed with the use of federal funds are accessible to and usable by children with disabilities. (h) The public agency has adopted effective procedures for: (i) Acquiring and disseminating to teachers and administrators participating in each program, significant information from educational research, demonstrations and similar projects. (ii) Adopting, if appropriate, promising educational practices developed through those projects. (i) The public agency will ensure: Funds expended under any applicable program will not be used to acquire equipment (including computer software) in any instance in which acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization. (17) 34 CFR Part 74-85 Education Department General Administration Regulation (EDGAR) and/or 7 CFR Part 3015 and 3016 Uniform Federal Assistance Regulations. (18) The General Education Provision Act, 20 U.S.C. 1221 et. seq. (19) The Family Educational Rights and Privacy Act of 1974 and any implementing regulations thereto. (20) The New Mexico State Department of Education assumes rights to all materials and/or products developed as a result of all federal and/or state funded projects. (21) The public agency assures that it will comply with the "New restrictions on lobbying" and will submit the "Disclosure Form to report lobbying", as required. (22) Implementation of Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, and any implementing regulations thereto. (a) The public agency certifies: (i) That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency. (ii) That if it is unable to certify to any of the statements in this certification, such public agency shall prepare an explanation.

(S) OTHER REQUIREMENTS - Each public agency must publish additional procedures and information which the NMSDE may require in order to meet its IDEA State Plan requirements.

SECTION III - PROCEDURAL SAFEGUARDS

SUBSECTION A: DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

(A) GENERAL RESPONSIBILITY OF PUBLIC AGENCIES - Each public agency shall establish, implement and publish written procedural safeguards which meet the requirements set forth in SECTION III of these rules.

(B) PRIOR NOTICE; PARENT CONSENT - (1) Notice. Written notice which meets the requirements of Section III (C) of these rules, must be given to the parents of a child with a disability a reasonable time before the public agency: (a) proposes to initiate or change the identification, evaluation or delivery of educational services to the child or the provision of a free appropriate public education to the child, or (b) refuses to initiate or change the identification, evaluation or delivery of educational services to the child or the provision of a free appropriate public education to the child. (2) Consent. (a) parental consent must be obtained before: (i) conducting an initial evaluation; and (ii) initial delivery of services to a child with a disability in a program providing special education and related services. (b) except for initial evaluation and initial delivery of services, consent may not be required as a condition of any benefit to the parent or child. (3) Procedures Where Parent Refuses Consent (a) Where a parent refuses consent to identify, evaluate or provide services to a child with a disability, the public agency may use the impartial due process hearing procedures specified in Section III(H) of these rules to determine if the child may be evaluated or initially provided special education and related services without parental consent. (b) If the hearing officer upholds the public agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent subject to the parent rights specified in this Section III, Subsection A (H-Q) of these rules.

(C) CONTENT OF NOTICE - (1) The notice under Section III(B) of these rules must include: (a) a full explanation of the procedural safeguards available to the parents under Section III; (b) a description of the action proposed or refused by the public agency, an explanation of why the agency proposes or refuses to take the action and a description of any options the agency considered and the reasons why those options were rejected; (c) a description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal and (d) a description of any other factors which are relevant to the agency's proposal or refusal. (2) The notice must be: (a) written in language understandable to the general public and (b) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (3) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to insure: (a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (b) that the parent understands the content of the notice; and (c) that there is written documentation that the requirements in this paragraph have been met.

(D) OPPORTUNITY TO EXAMINE RECORDS - The parents of a child with a disability shall be afforded an opportunity to inspect and review all education records with respect to: (1) the identification, evaluation, and delivery of educational services to the child, and (2) the provision of a free appropriate public education to the child.

(E) INDEPENDENT EDUCATIONAL EVALUATION - (1) General. (a) The parents of a child with a disability have the right to obtain an independent educational evaluation of the child, subject to (2) through (5) of this paragraph. (b) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained. (2) Parent Right to Evaluation at Public Expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing to demonstrate that its evaluation is appropriate. If through a hearing the final decision is that the public agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (3) Parent Initiated Evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation: (a) must be considered by the public agency in any decision(s) made with respect to the provision of a free appropriate public education to the child; and (b) may be presented as evidence at a hearing under Section III of these rules regarding that child. (4) Requests for Evaluations by Hearing Officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. (5) Agency Criteria. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner(s), must be the same as the criteria which the public agency uses when it initiates an evaluation.

(F) MEDIATION - Although the process of mediation is not required under these rules, public agencies may wish to suggest mediation in disputes concerning the identification, evaluation and delivery of educational services to children with disabilities, and the provision of a free appropriate public education to those children. Mediation may be conducted by trained mediators or public agency personnel not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and public agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation shall not be used to deny or delay a parent's rights under Section III of these rules.

(G) COMPLAINT- (1) This regulation prescribes procedures to be used: (a) in filing and processing complaints alleging the failure of the State Department of Education or a public agency to comply with federal statutes or regulations applicable to federal education programs subject to the Education Department General Administrative Regulations (EDGAR), (34 CFR Part 74 through 79) and (b) in reviewing an appeal from a decision of a public agency with respect to a complaint. (2) The NMSDE shall accept and investigate complaints from organizations or individuals with respect to programs set forth above. The complaint must: (a) Be written; (b) be signed by the complaining party or his or her designated representative; (c) contain a statement that the NMSDE or a public agency has violated a requirement of a federal statute or regulation that applies to a program; (d) contain a statement of the facts forming the basis of the complaint; and (e) contain a statement that the matter(s) complained of have been brought to the attention of the public agency and have not been resolved to the satisfaction of the complainant. (3) Complaints against Public Agencies: (a) Impartial Review. Upon receipt of a complaint which meets the requirements of Section III, Subsection A(G(2)) of these rules, the NMSDE shall: (i) acknowledge receipt of the complaint in writing; (ii) notify in writing the public agency against which the violation has been alleged; (iii) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if necessary; and (iv) consider all facts and issues presented and the applicable requirements specified in federal statutes and regulations. (b) A written decision, including findings and the basis for such findings, shall be issued by the State Superintendent of Public Instruction or his designee and mailed to the parties within sixty (60) calendar days of receipt of the written complaint. Such decision shall further include: (i) if corrective action is required, such action shall be designated in the decision and shall include the time line for correction and the possible consequences for continued noncompliance; (ii) a statement of the right to request the Secretary of the United States Department of Education to review the final decision if provided for by federal statute or regulation. (c) Failure or refusal to comply. If the public agency fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the NMSDE by any means authorized by state or federal statute or regulation. The NMSDE shall retain jurisdiction over the implementation of any corrective action required. Nothing herein shall preclude the availability of an informal resolution between the complainant and the public agency, nor shall these rules preclude or abrogate the availability of any administrative hearing opportunities as provided for by federal statute or regulation. (4) Complaints Against the NMSDE. If the complaint concerns a violation by the NMSDE and meets the applicable requirements of Section III, Subsection A(G)(2) of these rules, the State Superintendent of Public Instruction shall appoint an impartial person or impartial persons to conduct an independent evaluation.

(H) IMPARTIAL DUE PROCESS HEARING - (1) A parent or a public agency may initiate a hearing on any of the matters described in Section III, Subsection A(B) of these rules. (2) The hearing must be conducted in accordance with the procedures established in Section III, Subsection A(I) of these rules. (3) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if: (a) the parent requests the information; or (b) the parent or the agency initiates a hearing under this Section.

(I) IMPARTIAL DUE PROCESS HEARING PROCEDURES - (1) A parent or guardian initiating an impartial due process hearing shall hand-deliver or mail by certified mail a written request to the public agency superintendent and to the State Superintendent of Public Instruction. A public agency initiating an impartial due process hearing shall hand-deliver or mail by certified mail a written request to the parent or guardian and to the State Superintendent of Public Instruction. The reason(s) for the request shall be specifically stated. (2) Pursuant to Section III, Subsection A(P) of these rules the NMSDE insures that: (a) Within ten (10) calendar days of receipt of request for an impartial due process hearing the parties involved shall be encouraged to conduct a mediation conference. (b) Within ten (10) calendar days of receipt of a request for an impartial due process hearing individual records shall be exchanged by the parties involved in a manner consistent with Section III, Subsection E of these rules. (c) Within fifteen (15) calendar days of receipt of request for an impartial due process hearing, the NMSDE shall mail by certified mail to the parties three randomly selected names of Impartial Hearing Officers. (d) Within five calendar days of receipt of names of the three randomly selected Impartial Hearing Officers, the parties shall mutually select one Impartial Hearing Officer and both parties shall notify the State Superintendent of Public Instruction by certified mail. (e) Specific impartial due process hearing rights shall be afforded to any party to a hearing pursuant to Section III, Subsection A(K) of these rules. (3) The Impartial Hearing Officer shall have the authority to: (a) insure the hearing rights of the parties pursuant to Section III, Subsection A(K) of these rules; (b) request, as appropriate, an independent educational evaluation of the child at public expense pursuant to Section III, Subsection A(E)(4); (c) require the parties to submit written arguments or briefs on the issues raised in the hearing; and (d) grant specific extensions of time beyond the periods set out in Section III, Subsection A(I) and (P) of these rules, at the request of either party. The New Mexico Rules of Evidence shall not apply to Impartial Due Process Hearings. (4) The Impartial Due Process Hearing shall be electronically recorded and a verbatim printed transcript shall be provided to the Impartial Hearing Officer and parents within five (5) calendar days of completion of the Impartial Due Process Hearing. The public agency is responsible for the recording, printed transcript, and the costs incurred therein. (5) The Impartial Hearing Officer, pursuant to Section III, Subsection A(P) of these rules, shall prepare a final written decision and mail by certified mail a copy of the decision to the parents, the public agency, and the State Superintendent of Public Instruction.

(J) IMPARTIAL HEARING OFFICER - (1) A hearing may not be conducted: (a) by a person who is an employee of a public agency which is involved in the education or care of the child; or (b) by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (2) A person who otherwise qualifies to conduct a hearing under item (1) of this paragraph is not an employee of the public agency solely because s/he is paid by the agency to serve as a hearing officer. (3) The NMSDE shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(K) HEARING RIGHTS - (1) Any party to a hearing has the right to: (a) be accompanied and advised by counsel and by an individual with special knowledge or training with respect to the needs of children with disabilities; (b) present evidence and confront, cross-examine and compel the attendance of witnesses; (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing; (d) obtain a written or electronic verbatim record of the hearing; and (e) obtain written findings of facts and decisions. (The NMSDE shall share those findings and decisions, after deleting any personally identifiable information, with the State IDEA Advisory Panel). (2) Parents involved in hearings must be given the right to: (a) have the child who is the subject of the hearing present; and (b) open the hearing to the public.

(L) HEARING DECISION; APPEAL - A decision rendered in an impartial due process under Section III of these rules is final, unless a party to the hearing appeals the decision under paragraphs (M) and (N) of Section III, Subsection A of these rules.

(M) ADMINISTRATIVE APPEAL; IMPARTIAL REVIEW - (1) Impartial due process hearings are conducted by the public agency directly responsible for the provision of a free appropriate public education to the child with a disability. Any party aggrieved by the findings and decision in the hearing may appeal to the NMSDE. (2) If there is an appeal, the NMSDE shall conduct an impartial review of the hearing in accordance with procedures established in Section III, Subsection A(N) of these rules. The Administrative Appeal Official shall: (a) examine the entire hearing record; (b) insure that the procedures at the hearing were consistent with the requirements of due process; (c) seek additional evidence if necessary (If a hearing is held to receive additional evidence, the rights in paragraph (Q) of Section III, Subsection A, apply); (d) afford the parties an opportunity for oral or written argument, or both, at the discretion of the Administrative Appeal Official; (e) make an independent decision on completion of the review; and (f) give a written copy of findings and the decision to the parties. (3) The decision rendered by the Administrative Appeal Official is final, unless a party brings a civil action under paragraph (O) of Section III, Subsection A of these rules. (4) All parties have the right to continue to be represented by counsel at the Administrative Appeal level, whether or not the Administrative Appeal Official determines that a further hearing is necessary.

(N) ADMINISTRATIVE APPEAL; IMPARTIAL REVIEW PROCEDURES - (1) The request for review shall be made in writing and hand-delivered or mailed by certified mail to the State Superintendent of Public Instruction within thirty (30) calendar days from the date the Impartial Due Process Hearing decision is mailed by the Impartial Hearing Officer. The reason(s) for the request shall be specifically and clearly stated. The party requesting the review shall also hand-deliver or mail by certified mail a copy of the request for review to the opposing party. (2) Pursuant to Section III, Subsection A(P) of these rules, the State Department of Education shall insure that not later than thirty (30) calendar days after the receipt of a request for review: (a) a final decision is reached in the review; and, (b) a copy of the decision is mailed by certified mail to each of the parties. (3) The Administrative Appeal Official shall have the authority to: (a) examine the entire Impartial Due Process Hearing record; (b) insure that the procedures at the Impartial Due Process Hearing were consistent with the requirements of due process; (c) seek additional evidence, if necessary (If a hearing is held to receive additional evidence, the hearing rights in Section III, Subsection A(K) of these rules apply.); (d) afford the parties an opportunity for oral or written argument, or both, at the discretion of the Administrative Appeal Official; (e) make an independent decision on completion of the review; (f) grant specific extensions of time beyond the period set out in Section III, Subsection A(N)(2) and (P) of these rules; and (g) prepare a final written decision and mail by certified mail a copy of the decision to the parents, the public agency, and the State Superintendent of Public Instruction. (4) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved. (5) The decision of the Reviewing Officer is final, unless a party brings a civil action under Section III, Subsection A(O) of these rules.

(O) CIVIL ACTION - Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under paragraph (H) of Section III, Subsection A of these rules and any party aggrieved by the decision of an Administrative Appeal Officer under paragraph (M) of Section III, Subsection A of these rules has the right to bring a civil action.

(P) TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS - (1) The NMSDE insures that not later than 45 calendar days after the receipt of a request for a hearing: (a) a final decision is reached in the hearing; and (b) a copy of the decision is mailed to each of the parties. (2) The NMSDE insures that not later than 30 calendar days after the receipt of a request for a review: (a) a final decision is reached in the review; and (b) a copy of the decision is mailed to each of the parties. (3) A hearing or review officer may grant specific extensions of time beyond the periods set forth in items (1) and (2) of this paragraph at the request of either party. (4) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(Q) CHILD'S STATUS DURING PROCEEDINGS - (1) During the pendency of any administrative or judicial proceeding regarding a hearing, unless the public agency and the parents of the child agree otherwise, the child involved in the hearing must have his or her present delivery of services continued. (2) If the hearing involves an application for initial admission to public school, the child, and with the consent of the parents, must be placed in the public school program until the completion of all the proceedings. (3) This paragraph does not permit a child's delivery of services to be changed during a hearing proceeding, unless the parents and public agency agree otherwise. While the delivery of services may not be changed, this does not preclude the public agency from using its normal procedures for dealing with children who are endangering themselves or others.

(R) SURROGATE PARENTS - (1) General. Each public agency shall insure that the rights of a child are protected when: (a) no parent as defined in paragraph (Q) of Section I of these rules can be identified; (b) the public agency, after reasonable and documented efforts, cannot discover the whereabouts of a parent; or (c) the child is a ward of the State under the laws of New Mexico. (2) Duty of Public Agency. The duty of a public agency under item: (1) of this paragraph includes the assignment of an individual to act as a surrogate for the parents. This must include a method (a) for determining whether a child needs a surrogate parent; and (b) for assigning a surrogate parent to the child. (3) Criteria for Selection of Surrogates. (a) The public agency may select a surrogate parent in any way permitted under New Mexico law and these rules. (b) Public agencies shall insure that a person selected as a surrogate: (i) has no interest that conflicts with the interest of the child s/he represents; and (ii) has knowledge and skills, that insure adequate representation of the child. (4) Non-Employee Requirement; Compensation. (a) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child. (b) A person who otherwise qualifies to be a surrogate under item (3) and (4)(a) of this paragraph, is not an employee of the agency solely because s/he is paid by the agency to serve as surrogate parent. (5) Responsibilities. The surrogate parent may represent the child in all matters relating to: (a) the identification, evaluation and delivery of educational services to the child; and (b) the provision of a free appropriate public education to the child.

SUBSECTION B: PROTECTION IN THE EVALUATION AND DELIVERY OF SERVICES PROCESS

(A) REFERRAL FOR MULTIDISCIPLINARY EVALUATION - Whether from general screening or from direct referrals, local education agencies shall maintain a record of the receipt, processing, and disposition of referrals for multidisciplinary evaluation. Prior to referral for multidisciplinary evaluation the public agency shall also document the implementation of prereferral intervention strategies.

(B) INITIAL MULTIDISCIPLINARY EVALUATION - Before any action is taken with respect to the initial delivery of services of a child with a disability, a full and individual multidisciplinary evaluation of the child's educational needs must be conducted at no cost to parents.

(C) EVALUATION PROCEDURES - (1) Testing and evaluation materials and procedures used for the purposes of evaluation and delivery of services to children with disabilities must be selected and administered so as not to be racially or culturally discriminatory. At a minimum, tests and other evaluation materials: (a) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; (b) have been validated for the specific purpose for which they are used; and (c) are administered by trained personnel, such as a school psychologist, educational diagnostician, speech-language pathologist, classroom teacher, program specialist or remedial reading teacher, in conformance with the instructions provided by their producers. (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient. (3) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purpose is to measure). (4) No single procedure is used as the sole criterion for determining an appropriate educational program for a child. Additional factors influence the choice of a specific evaluation procedure, including the child's age, severity and nature of disability, progress in school and availability of data from many sources (e.g., school and home). Sources of information that must be considered in an evaluation include, but are not limited to, review of records, interviews, observations, curriculum-based measures, rating scales, and psychoeducational tests. Some areas of evaluation may require procedures from several of these data sources. (5) The evaluation is made by a multidisciplinary team or group of persons, including family members, at least one teacher and a qualified specialist in the area(s) of suspected disability. (6) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (7) Children who have a speech-language impairment as their primary disability may not need a complete battery of assessments (e.g.. psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would: (a) evaluate each child with a speech-language impairment using procedures that are appropriate for the assessment and evaluation of children with a speech-language impairment; and (b) where necessary, make referrals for additional assessments needed to make an appropriate delivery of services decision. (8) An observation process must be included within the evaluation procedures as follows: (a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age. (9) All appropriate evaluation data, inclusive of summary reports from all individuals evaluating the child, is reported in writing for presentation to the IEP team. (10) Evaluation procedures shall be completed in a timely manner.

(D) DELIVERY OF SERVICES PROCEDURES - (1) In interpreting evaluation data and in making delivery of services decisions, each agency must: (a) draw upon information from a variety of sources, including but not limited to aptitude and achievement tests, teacher recommendations, parent information, physical condition, social, linguistic or cultural background, and adaptive behavior; (b) insure that information obtained from all of these sources is documented and carefully considered; (c) insure that the delivery of services decision is made by a multidisciplinary group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the delivery of services options; (d) insure that more than one source is used in interpreting evaluation data and in making delivery of services decisions; and (e)insure that the delivery of services decision is made in conformity with the least restrictive environment rules. (2) If a determination is made that a child is disabled and needs special education and related services, an IEP must be developed for the child and implemented according to the provisions identified in the IEP.

E) REEVALUATION - (1) Each agency shall insure: (a) that each IEP for a child with a disability is reviewed at least annually; and (b) that an evaluation of the child is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation. (2) A flexible approach to three-year reevaluations based on the unique needs of the child and the specific questions that need to be answered is required. Reevaluations must be meaningful, individualized, multifaceted, and serve the best interests of children. (3) The following factors must be considered in conducting and in shaping the nature of reevaluations: (a) the purposes and specific questions for reevaluation must guide the selection of evaluation methods; and (b) three broad purposes of reevaluation are: (i) evaluating the effectiveness of the child's IEP, (ii) evaluating the appropriateness of the child's current interventions and determining his/her future needs, and (iii) determining whether the child continues to be in need of special education services. (4) Additional factors influence the choice of a specific evaluation procedure, including the child's age, severity and nature of disability, progress in school, years receiving special educational services, availability of data from many sources (e.g., school and home), and the consistency of the results of previous evaluations. (5) Sources of information that must be considered in an evaluation include, but are not limited to, review of records, interviews, observations, curriculum-based measures, rating scales, vocational assessments, medical assessments and psychoeducational tests. Some areas of evaluation may require procedures from several of these data sources.

SUBSECTION C - ADDITIONAL PROCEDURES FOR EVALUATING CHILDREN WITH A SPECIFIC LEARNING DISABILITY

(A) ADDITIONAL TEAM MEMBERS - In evaluating a child with a specific learning disability each agency shall include on the multidisciplinary evaluation team: (1)(a) the child's regular teacher; or (b) if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (c) for a child of less than school age, a person qualified by the NMSDE to teach a child of his or her age; and (2) at least one person qualified to conduct child evaluations, such as a school psychologist, educational diagnostician, speech-language pathologist, classroom teacher, program specialist or remedial reading teacher.

(B) CRITERIA FOR DETERMINING THE EXISTENCE OF A SPECIFIC LEARNING DISABILITY - (1) A team may determine that a child has a specific learning disability if: (a) the child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (b) below of this section, when provided with learning experiences appropriate for the child's age and ability levels; and (b) the team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: (i) oral expression; (ii) listening comprehension; (iii) written expression; (iv) basic reading skill; (v) reading comprehension; (vi) mathematics calculation; or (vii) reasoning. (2) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of: (a) a visual, hearing, or motor disability; (b) intellectual disability; (c) emotional disturbance; or (d) environmental, cultural or economic factors.

(C) OBSERVATION - (1) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (2) In the case of a child out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(D) WRITTEN REPORT - (1) The team shall prepare a written report of the results of the evaluation. (2) The report must include a statement of: (a) whether the child has a specific learning disability; (b) the basis for making the determination; (c) the relevant behavior noted during the observation of the child; (d) the relationship of that behavior to the child's academic functioning; (e) the educationally relevant medical findings, if any; (f) whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and (g) the determination of the team concerning the effects of environmental, cultural, or economic factors. (3) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusion.

SUBSECTION D: LEAST RESTRICTIVE ENVIRONMENT

(A) GENERAL - (1) Each public agency shall establish and implement procedures which meet the requirements of Section III, Subsection D of these rules. (2) Each public agency shall insure: (a) that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and (b) that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) CONTINUUM OF ALTERNATIVE SERVICE DELIVERY MODELS - (1) Each public agency shall insure that a continuum of alternative service delivery models is available to meet the needs of children with disabilities for special education and related services. (2) The continuum required under paragraph (B)(1) shall: (a) include the alternative service delivery models listed in the definition of special education, and in Section I of these rules; and (b) make provision for supplementary aids and services to be provided in conjunction with regular classes.

(C) SERVICE DELIVERY MODELS - Each public agency shall insure that: (1) Each child's educational service delivery model: (a) is determined at least annually, (b) is based on his or her IEP; and (c) is as close as possible to the child's home; (2) these various alternative service delivery models are available to the extent necessary to implement the IEP for each child with a disability; (3) unless the IEP requires some other arrangement, the child is educated in the school which he or she would attend if not disabled; (4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; (5) delivery of services decisions must be made on an individual basis; (6) each agency must have various alternative service delivery models available in order to insure that each child with a disability receives an education which is appropriate to his or her individual needs; (7) Each child's delivery of services model is in the least restrictive environment in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of Section IV, Subsection B and Section III, Subsection D of these rules; and (8) delivery of services requirements apply to all preschool children with disabilities who are entitled to receive a free appropriate public education. Public agencies that provide preschool programs for children without disabilities must ensure that the least restrictive environment requirements are met. Public agencies that do not operate programs for preschool children without disabilities are not required to initiate such programs solely to satisfy the requirements regarding delivery of services in the least restrictive environment.

For these public agencies, some alternative methods for meeting the delivery of services requirements, include: (a) providing opportunities for the participation of preschool children with disabilities in other preschool programs operated by public agencies; (b) placing children with disabilities in private school programs for preschool children without disabilities or private school preschool programs that integrate children who are disabled with children who are not disabled; and (c) locating classes for preschool children with disabilities in regular elementary schools.

(D) NONACADEMIC SETTINGS - (1) In providing or arranging for the provision of nonacademic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in Section IV, Subsection A of these rules, each public agency shall insure that each child with a disability participates with children who are not disabled in those services and activities to the maximum extent appropriate to meet the needs of that child. (2) Children with disabilities must also be provided nonacademic services in as integrated a setting as possible. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with children who are not disabled.

SUBSECTION E: CONFIDENTIALITY OF INFORMATION

(A) ACCESS RIGHTS - (1) Each participating agency shall permit parents to inspect and review any educational records relating to their children which are collected, maintained, or used by the agency under these rules. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or delivery of services to the child, and in no case more than 45 days after the request has been made. (2) The right to inspect and review educational records under this section includes: (a) the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (b) the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (c) the right to have a representative of the parent inspect and review the records. (3) A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(B) RECORD OF ACCESS - Each participating agency shall keep a record of parties obtaining access to educational records collected, maintained, or used under these rules (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(C) RECORDS ON MORE THAN ONE CHILD - If any educational record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(D) LIST OF TYPES AND LOCATIONS OF INFORMATION - Each participating agency shall provide parents on request a list of the types and locations of educational records collected, maintained, or used by the agency.

(E) FEES - (1) A participating education agency may charge a fee for copies of records which are made for parents under these rules if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. (2) A participating agency may not charge a fee to search for or to retrieve information under these rules.

(F) AMENDMENT OF RECORDS AT PARENT'S REQUEST - (1) A parent who believes that information in educational records collected, maintained, or used under these rules is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information. (2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (3) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

(G) OPPORTUNITY FOR A HEARING - The agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(H) RESULT OF HEARING - (1) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing. (2) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (3) Any explanation placed in the records of the child under these rules must: (a) be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (b) if the records of the child or the contested portion(s) are disclosed by the agency to any party, the explanation must also be disclosed to the party.

(I) HEARING PROCEDURES - A hearing must be conducted according to the procedures under FERPA.

(J) CONSENT - (1) Parental consent must be obtained before personally identifiable information is: (a) disclosed to anyone other than officials of participating agencies collecting or using the information under these rules, subject to item (2) of this paragraph; or (b) used for any purpose other than meeting a requirement under these rules. (2) An educational agency or institution subject to FERPA may not release information from educational records to participating agencies without parental consent unless authorized to do so under FERPA.

(K) SAFEGUARDS - (1) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (2) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information. (3) All persons collecting or using personally identifiable information must receive training or instruction regarding FERPA.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(L) DESTRUCTION OF INFORMATION - (1) The public agency shall inform parents when personally identifiable information collected, maintained or used under these rules is no longer needed to provide educational services to the child. (2) The information must be destroyed at the request of the parents. However, a permanent record of a child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation. (3) The personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under these rules, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (2).

SECTION IV - SERVICES

SUBSECTION A - FREE APPROPRIATE PUBLIC EDUCATION

(A) TIMELINES FOR A FREE APPROPRIATE PUBLIC EDUCATION - Each public agency shall insure that a free appropriate public education is available to all children with disabilities aged three (3) through twenty-one (21).

(B) RESIDENTIAL DELIVERY OF SERVICES - If delivery of services in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State supported public programs.

(C) PROPER FUNCTIONING OF HEARING AIDS - Each public agency shall insure that the hearing aids worn in school by children (who are deaf and hard of hearing) in school are functioning properly.

(D) FULL EDUCATIONAL OPPORTUNITY GOAL - Each public agency shall implement a goal of providing full educational opportunity for all children with disabilities birth through age twenty-one (21) within the jurisdiction of the agency.

(E) PROGRAM OPTIONS - Each public agency shall insure that children with disabilities have available to them the variety of educational programs and services available to children without disabilities within the jurisdiction of the agency, including, but not limited to, art, music, industrial arts, consumer and homemaking education and vocational education. The list of program options is not exhaustive and could include any program or activity in which children without disabilities participate. Vocational education programs must be specially designed, if necessary, to enable a child with a disability to benefit fully from those programs.

(F) NONACADEMIC SERVICES - (1) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups, or clubs sponsored by the public agency, referrals to agencies which provide assistance to persons with disabilities, and employment of children with disabilities, including both employment by the public agency and assistance in making outside employment available.

(G) PHYSICAL EDUCATION - (1) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education. (2) General physical education. Each child with a disability must be afforded the opportunity to participate in the general physical education program available to children without disabilities unless: (a) the child is enrolled full time in a separate facility; or (b) the child needs specially designed physical education, as specified in the child's IEP. (3) Special physical education. If specially designed physical education is specified in a child's IEP, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs. (4) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall insure that the child receives appropriate physical education services. (5) Special education includes instruction in physical education - and shall be provided as an integral part of the educational program of every child with a disability.

(H) ASSISTIVE TECHNOLOGY - (1) Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in Section I of these rules, are made available to any child with a disability who requires an assistive technology device or service in order to receive a free appropriate public education. (2) Assistive technology devices and assistive technology services for children with disabilities may be provided as special education, related services, or, in the case of children with disabilities to be educated in regular classes, as supplementary aids and services.

SUBSECTION B - INDIVIDUALIZED EDUCATION PROGRAMS

(A) DEFINITION - As used in these rules, an individualized education program (IEP) means a written statement for a child with a disability that is developed and implemented according to Section IV, Subsection B.

(B) RESPONSIBILITY - (1) Public agencies. Each public agency must develop and implement an IEP for each child with a disability within its jurisdiction. (2) Private schools and facilities. Each public agency shall insure that an IEP is developed and implemented for each child with a disability who is: (a) placed in or referred to a private school or facility by a public agency; or (b) enrolled in a parochial or other private school and receives special education or related services from a public agency.

(C) WHEN IEPs MUST BE IN EFFECT - An IEP must: (1) be in effect before special education and related services are provided to a child; (2) be implemented as soon as possible following the IEP meetings; and (3) be implemented immediately following the meeting except: (a) when the meetings occur during the summer or a vacation period; or (b) where there are circumstances which require a short delay. There can be no undue delay in providing special education and related services to the child.

(D) MEETINGS - (1) Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising a child's IEP. (2) Review. Each public agency shall initiate and conduct meetings to periodically review each child's IEP and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year. The timing of meetings to develop, review and revise IEPs is left to the discretion of each agency and meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year. The timing of those meetings also may be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency.

(E) PARTICIPANTS IN IEP MEETINGS - (1) General. Each public agency shall insure that each IEP meeting includes the following participants: (a) a representative of the public agency, other than the child's teacher, who is qualified to provide or supervise the provision of special education; (b) the child's teacher(s); (c) one or both of the child's parents; (d) the child, where appropriate; and (e) Other individuals at the discretion of the parent or agency; (2) Evaluation personnel. For a child with a disability who has been evaluated for the first time, the public agency shall insure: (a) that a member of the evaluation team participates in the meeting; or (b) that the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation. (3) TRANSITION SERVICES PERSONNEL - For students with disabilities aged 16 years and older, and for students below age 16 whose need for transition services is being considered, the public agency shall ensure that any meeting to develop, review, or revise the student's IEP includes: (a) a representative of the public agency responsible for providing or supervising the provision of transition services; and (b) if appropriate, a representative of other participating agencies providing transition services included in the student's IEP; and (c) if appropriate, the public agency responsible for the student's education must include the student at an IEP meeting to ensure that the transition services component of the student's IEP addresses the student's needs, preferences and interests.

(F) PARENT PARTICIPATION - (1) Each public agency shall insure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including: (a) providing written notice of the IEP meeting to parents early enough to insure that they will have an opportunity to attend; and (b) scheduling the meeting at a mutually agreed on time and place. (2) The written notice must indicate the purpose, time and location of the meeting, and who will be in attendance. (3) The notice also must inform parents that they may bring other people to the meeting. If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls. (4) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must have a record of its attempts to arrange a mutually agreed upon time and place such as: (a) detailed records of telephone calls made or attempted and the results of those calls. (b) copies of correspondence sent to the parents and any responses received; and (c) detailed records of visits made to the parent's home or place of employment and the results of those visits. (5) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English. (6) The public agency shall give the parent a copy of the IEP.

(G) CONTENT OF IEP - The IEP for each child must include: (1) a statement of the child's present levels of educational performance which must accurately describe the effect of the child's disability on the child's performance in any area that is affected and must be written in objective measurable terms; (2) a statement of annual goal(s), including measurable short-term instructional objectives; (3) a statement of the specific special education and related service(s) to be provided to the child and the extent to which the child will participate in general education programs. The amount of service(s) to be provided must be stated and the amount of time to be committed to each service must be stated; (4) a description of modifications to the child's general education program, if modifications are necessary to ensure the child's participation in that program; (5) the projected date(s) for initiation of service(s) and the anticipated duration of the service(s); (6) appropriate objective criteria and evaluation procedure(s) and schedule(s) for determining, on at least an annual basis, whether the annual goal(s) and measurable short-term instructional objectives are being achieved; (7) a statement of the needed transition services for a child, beginning no later than age 16, annually thereafter, and, when appropriate for the child, beginning at age 14 or younger, including, when appropriate, a statement of the interagency responsibilities and/or linkages before the child leaves the school setting; (8) the signature and position of each participant present during the development of the IEP; (9) the IEP must be developed prior to initial delivery of services and the initiation of special education and related service(s); and (10) The public agency shall provide the parent a copy of the individual's IEP at no cost.

(H) AGENCY RESPONSIBILITIES FOR TRANSITION SERVICES - (1) If a participating agency, other than the public agency responsible for the student's education, fails to provide agreed upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall reconvene a meeting of all of the participants on the individualized education team to identify alternative strategies to be implemented to meet the transition objectives that were included in that student's IEP. (2) Nothing in this part relieves any participating agency, including the Division of Vocational Rehabilitation or the Commission for the Blind, of responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(I) PRIVATE OR STATE SUPPORTED PUBLIC PROGRAM PLACEMENTS - (1) Developing the IEP. Before a public agency places a child with a disability in, or refers a child to, a private or state supported public program or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child. The agency shall insure that a representative of the private or state supported public program or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private or state supported public program or facility, including individual or conference telephone calls. (2) Reviewing and revising the IEP. (a) After a child with a disability enters a private or state supported public program or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency. (b) If the private or state supported public program or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative: (i) are involved in any decision about the child's IEP; and (ii) agree to any proposed changes in the IEP before those changes are implemented. (3) Responsibility. Even if a private or state supported public program or facility implements a child's IEP, responsibility for compliance with these rules remains with the public agency.

(J) CHILDREN WITH DISABILITIES IN PAROCHIAL OR OTHER PRIVATE SCHOOLS - If a child with disabilities is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall: (1) initiate and conduct meetings to develop, review and revise an IEP for the child; and

(2) insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(K) IEP ACCOUNTABILITY - Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. This does not require that any agency, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goal(s) and objectives. An IEP does not constitute a guarantee by the public agency and the teacher that a child will progress at a specified rate. Agencies and teachers are not relieved from making good faith efforts to assist the child in achieving the goal(s) and objectives listed in the IEP. Parents have a right to complain about and ask for revisions of the child's IEP, or to invoke due process procedures, if the parent feels that a good faith effort is not being made by the agency or teachers.

SECTION V - STATE SUPPORTED PUBLIC PROGRAMS

(A) CHILDREN WITH DISABILITIES IN STATE SUPPORTED PUBLIC PROGRAMS PLACED OR REFERRED BY OTHER PUBLIC AGENCIES - (1) Applicability. These rules apply only to children with disabilities who are or have been placed in, or referred to, a state supported public program or facility by another public agency as a means of providing special education and related services. (2) Responsibility. Each public agency shall insure that a child with a disability who is placed in or referred to a state supported public program by another public agency: (a) Is provided special education and related services: (i) in conformance with an IEP; (ii) at no cost to parents; and (iii) at a school or facility which is accredited by the New Mexico State Board of Education and/or licensed by the New Mexico Department of Health; and (b) has all the rights of a child with a disability who is served by any other public agency. (3) Service Delivery. (a) When an IEP Committee determines that the public agency is unable to meet the needs of the child as specified on the child's IEP, the public agency may refer the child to a state supported public program. (b) When a public agency refers or places a child in a state supported public program, the referring public agency remains responsible for assuring the provision of a free appropriate public education to the child. (4) Interagency agreements. Responsibility for services for children placed in or referred to state supported public programs shall be defined by an interagency agreement among the referring public agency, the state supported public program and the parent. (5) Annual review. On an annual basis, the referring public agency, the state supported public program and the parent will jointly review the child's IEP at a site specified in the interagency agreement.

(B) CHILDREN WITH DISABILITIES REFERRED TO OR PLACED IN STATE SUPPORTED PUBLIC PROGRAMS BY A PUBLIC AUTHORITY, OTHER THAN THE PUBLIC AGENCY - Educational decisions involving children with disabilities which utilize unilateral decision making which excludes the responsible public agency are inconsistent with the procedural safeguards specified in Section III of these rules. Educational decisions made by public authorities, other than the public agency, which do not include the public agency in the decision making process are not the responsibility of the public agency. The authority making such a decision becomes the public agency responsible for a free appropriate public education.

SECTION VI - PRIVATE SCHOOLS

(A) CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES - (1) Applicability. These rules apply only to children with disabilities who are or have been placed in, or referred to, a private school or facility by a public agency as a means of providing special education and related services. (2) Responsibility. Each public agency shall insure that a child with a disability who is placed in or referred to a private school or facility by a public agency: (a) is provided special education and related services: (i) in conformance with an IEP; (ii) at no cost to the parents; and (iii) at a school or facility which is accredited by the New Mexico State Board of Education and/or licensed by the New Mexico Department of Health; and (b) has all of the rights of a child with a disability who is served by a public agency. (3) Delivery of services to children by parents. (a) If a child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by these rules to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided in Section VI (B) of these rules. (b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Section III, Subsection A of these rules.

(B) CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES - Each public agency shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency.

(C) CHILDREN WITH DISABILITIES REFERRED TO OR PLACED IN PRIVATE SCHOOLS BY A PUBLIC AUTHORITY OTHER THAN A PUBLIC AGENCY - Educational decisions involving children with disabilities which utilize unilateral decision making which excludes the responsible public agency are inconsistent with the procedural safeguards specified in Section III of these rules. Educational decisions made by public authorities, other than the public agency, which do not include the public agency in the decision making process are not the responsibility of the public agency. The authority making such a decision becomes the public agency responsible for a free appropriate public education.

PART II - CHILDREN WHO ARE GIFTED

SECTION I - DEFINITION

(A) CHILDREN WHO ARE GIFTED - means a school-age child whose measured intelligence quotient, either verbal or nonverbal, measures at least two standard deviations above the mean on an intelligence test and who meets at least one of the following additional criteria: (1) a score of at least ninety-fifth percentile or above on the total battery score of a standardized achievement test; (2) outstanding creativity or divergent thinking; and (3) outstanding critical thinking or problem-solving ability on a test.

(B) Only students who meet the established criteria defined paragraph (A) of this section may be included in calculating program units as specified in Chapter 4 of this manual. Nothing in this section shall preclude a public agency from offering gifted services to students who fail to meet the criteria defined in paragraph (A) of this section. This may include students from multicultural, multilinguistic or disadvantaged backgrounds or students with disabilities when they are considered by an IEP team for inclusion in gifted programs when standardized test results are suspected to be depressed, yet the profile of the child strongly indicates gifted ability. The following factors should be considered: (1) language background, (2) socio-economic status, (3) disability and (4) environmental/cultural background. Documentation of gifted ability in these students can be provided through, but not limited to: portfolios, video/audio tapes, judgement of creativity by appropriate professionals (e.g. artists, musicians, poets, historians), interviews and observations.

SECTION II - COMPLIANCE REGULATIONS

(A) APPLICABILITY - All definitions, policies, procedures, assurances, procedural safeguards and services identified in Part I of these rules apply to children who are gifted except children in private schools not placed or referred by public agencies.

APPENDIX A

INTERPRETATION OF IEP REQUIREMENTS

PURPOSE OF THE IEP

There are two main parts of the IEP requirement, as described in the these rules: (1) the IEP meeting(s), at which parents and school personnel jointly make decisions about the educational program of a child with a disability; and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning the special educational needs of a child with a disability: first, through the IEP meeting and second, if necessary, through the procedural protections that are available to parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the free appropriate public education agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes. (NOTE:

Teachers or other school personnel are not held accountable if a child with a disability does not achieve the goal(s) and objectives set forth in the IEP.)

1. WHO IS RESPONSIBLE FOR ENSURING THE DEVELOPMENT OF IEPS FOR CHILDREN WITH DISABILITIES SERVED BY A PUBLIC AGENCY OTHER THAN AN LEA?

The NMSDE is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of these rules.

The NMSDE must ensure that every child with a disability in New Mexico has available a free appropriate public education (FAPE), regardless of which agency is responsible for the child. While the NMSDE has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there **can be no failure** to provide FAPE due to jurisdictional disputes among agencies.

The following paragraphs outline: (1) some of the NMSDE'S responsibilities under a variety of interagency situations; and (2) some of the responsibilities of an LEA when it initiates the delivery of services to a child with a disability in a school or program operated by another State agency:

a. NMSDE RULES FOR INTERAGENCY AGREEMENTS. The NMSDE, through these rules or agreements, **must** ensure that IEPs are properly written and implemented for all children with disabilities in the State. This applies to each interagency situation that exists in the State, including any of the following: (1) when an LEA initiates a delivery of services to a child in a school or program operated by another State agency (SEE "LEA-Initiated Placements" in paragraph "b," below); (2) when a State or local agency other than the NMSDE or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities. (NOTE: This is not an exhaustive list. These rules cover any other interagency situation that is applicable, including placements that are made for both educational and noneducational purposes.)

Frequently, more than one agency is involved in developing or implementing a child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). These rules or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a child with a disability. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: the child's LEA, another State agency, an institution or school under that agency and the LEA where the institution is located. (NOTE: The NMSDE also must ensure that any agency involved in the education of a child with a disability is in compliance with the "least restrictive environment" provisions of the these rules, and, specifically, with the requirement that each child's delivery of services: (1) be determined at least annually; (2) be based on the child's IEP; and (3) be as close as possible to the child's home.

b. LEA-INITIATED PLACEMENTS. When an LEA is responsible for the education of a child with a disability, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in delivery of services in a State supported public program. (NOTE: The IEP **must** be developed before the child is placed. See Question 5, below.) When delivery of services in a State supported public program is necessary, the affected State agency or agencies **must** be involved by the LEA in the development of the IEP (See response to Question 58, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State supported public program, meetings to review or revise the child's IEP must be conducted and include the LEA and the State supported public program. Both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls).

2. FOR A CHILD PLACED OUT OF STATE BY A PUBLIC AGENCY, IS THE PLACING OR RECEIVING STATE RESPONSIBLE FOR THE CHILD'S IEP?

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education.

3. IN REQUIRING THAT AN IEP BE IN EFFECT BEFORE SPECIAL EDUCATION AND RELATED SERVICES ARE PROVIDED, WHAT DOES "BE IN EFFECT" MEAN?

As used in these rules, the term "be in effect" means that the IEP: (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified (parent, teacher, agency representative and, where appropriate, the child); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goal(s) and objectives, and the services to be provided; and (3) will be implemented as written.

4. HOW MUCH OF A DELAY IS PERMISSIBLE BETWEEN THE TIME A CHILD'S IEP IS FINALIZED AND WHEN SPECIAL EDUCATION IS PROVIDED?

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. Exceptions to this rule include: (1) when the meetings occur during the summer or other vacation period; or (2) when there are circumstances which require a short delay, such as working out transportation arrangements. However, unless otherwise specified in the IEP, the IEP services **must** be provided as soon as possible following the meeting.

5. FOR A CHILD WITH A DISABILITY RECEIVING SPECIAL EDUCATION FOR THE FIRST TIME, WHEN MUST AN IEP BE DEVELOPED-BEFORE DELIVERY OF SERVICES OR AFTER DELIVERY OF SERVICES?

An IEP **must** "be in effect BEFORE special education and related services are provided to a child". The appropriate delivery of services for a given child with a disability cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it **would not be permissible** to first place the child and then develop the IEP. Therefore, the IEP **must** be developed before delivery of services.

The above requirement does not preclude temporarily placing a child with a disability in a program as part of the evaluation process--before the IEP is finalized--to aid in determining the most appropriate delivery of services for the child. It is essential that the temporary delivery of services not become the final delivery of services before the IEP is finalized. In order to ensure that this does not happen, the NMSDE requires LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timelines for the trial delivery of services. (SEE paragraph "c", below.)

b. Ensure that the parents agree to the interim delivery of services before it is carried out and that they are involved throughout the process of developing, reviewing and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgements about the most appropriate delivery of services for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP. (NOTE: Once a child's IEP is in effect and the child begins receiving special education, the teacher might develop detailed lesson plans or objectives based on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (SEE Questions 36-42, below, regarding IEP goal(s) and objectives.))

6. IF A CHILD WITH A DISABILITY HAS BEEN RECEIVING SPECIAL EDUCATION IN ONE LEA AND MOVES TO ANOTHER COMMUNITY, MUST THE NEW LEA HOLD AN IEP MEETING BEFORE THE CHILD RECEIVES SPECIAL EDUCATION?

It would not be necessary for the new LEA to conduct an IEP meeting if: (1) a copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written. If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting **would have to be** conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).(NOTE: The child **must** be placed in a special education program immediately after the IEP is finalized. SEE Question 4, above.)

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final delivery of services decision can be made, it would be permissible to temporarily deliver services to the child on an interim basis before the IEP is finalized. (SEE Question 5, above.)

7. MUST THE AGENCY HOLD A SEPARATE MEETING TO DETERMINE A CHILD'S ELIGIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES, OR CAN THIS STEP BE COMBINED WITH THE IEP MEETING?

The evaluation of each child with a disability must be "made by a multidisciplinary team or group of persons...." The decisions regarding: (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting. (NOTE: When separate meetings are conducted, delivery of services decisions would be made at the IEP meeting. However, delivery of services options could be discussed at the eligibility meeting.) Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency **must** include the parents as participants at the meeting. (NOTE: If, at a separate eligibility meeting, a decision is made that a child is NOT eligible for special education, the parents should be notified about the decision.)

8. MUST IEP'S BE REVIEWED OR REVISED AT THE BEGINNING OF EACH SCHOOL YEAR?

No. The basic requirement in the regulations is that IEPs **must** BE IN EFFECT at the beginning of each school year. Meetings **must** be conducted at least once each year to review and, if necessary, revise each child's IEP. However, the meetings may be held any time during the year, including: (1) at the end of the school year; (2) during the summer, before the new school year begins; or (3) on the anniversary date of the last IEP meeting on the child.

9. HOW FREQUENTLY MUST IEP MEETINGS BE HELD AND HOW LONG SHOULD THEY BE?

Each public agency **must** hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. There should be as many meetings a year as any one child may need.

There is no prescribed length for IEP meetings. In general, meetings: (1) will be longer for initial service delivery and for children who require a variety of complex services; and (2) will be shorter for continuing delivery of services and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

10. WHO CAN INITIATE IEP MEETINGS?

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a child with a disability believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting. The parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's delivery of services or IEP are not appropriate to the child, the teacher(s) should follow agency procedures with respect to: (1) calling or meeting with the parents; and/or (2) requesting the agency to hold another meeting to review the child's IEP.

11. MAY IEP MEETINGS BE TAPE-RECORDED?

Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "educational record,"

within the meaning of FERPA, and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA, IDEA and these rules.

12. WHO CAN SERVE AS THE "REPRESENTATIVE OF THE PUBLIC AGENCY" AT AN IEP MEETING?

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities". Thus, the agency representative could be: (1) a qualified special education administrator, supervisor or teacher (including a speech-language pathologist); or (2) a school principal or other administrator, if the person is qualified to provide, or supervise the provision of, special education.

Each LEA may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a child with a disability who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency. (NOTE: IEP meetings for continuing service delivery could be more routine than those for initial delivery of services and might not require the participation of a key administrator.)

13. WHO IS THE "REPRESENTATIVE OF THE PUBLIC AGENCY" IF A CHILD WITH A DISABILITY IS SERVED BY A PUBLIC AGENCY OTHER THAN THE NMSDE OR LEA?

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if an LEA: (1) places a child in an institution; (2) is responsible for the child's education; and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

14. FOR A CHILD WITH A DISABILITY BEING CONSIDERED FOR INITIAL DELIVERY OF SERVICES IN SPECIAL EDUCATION, WHICH TEACHER SHOULD ATTEND THE IEP MEETING?

The teacher could be either: (1) a teacher qualified to provide special education in the child's area of suspected disability; or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

NOTE: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

15. IF A CHILD WITH A DISABILITY IS ENROLLED IN BOTH REGULAR AND SPECIAL EDUCATION CLASSES, WHICH TEACHER SHOULD ATTEND THE IEP MEETING?

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

16. IF A CHILD WITH A DISABILITY IN HIGH SCHOOL ATTENDS REGULAR CLASSES, MUST ALL OF THE CHILD'S REGULAR TEACHERS ATTEND THE IEP MEETING?

No. Only one teacher **must** attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they: (1) allow for more open, active parent involvement; (2) are less costly; (3) are easier to arrange and conduct; and (4) are usually more productive.

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meetings.

c. Although the child's regular teacher would not routinely attend IEP meetings, they should either: (1) be informed about the child's IEP by the special education teacher or agency representative; and/or (2) receive a copy of the IEP itself.

17. IF A CHILD'S PRIMARY DISABILITY IS A SPEECH-LANGUAGE IMPAIRMENT, MUST THE CHILD'S REGULAR TEACHER ATTEND THE IEP MEETING?

No. A speech-language pathologist would usually serve as the child's "teacher" for purposes of the IEP meeting. The regular teacher also could attend at the option of the school.

18. IF A CHILD IS ENROLLED IN A SPECIAL EDUCATION CLASS BECAUSE OF A DISABILITY, AND ALSO RECEIVES SPEECH-LANGUAGE PATHOLOGY SERVICES, MUST BOTH SPECIALISTS ATTEND THE IEP MEETING?

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher". The speech-language pathologist could either: (1) participate in the meeting itself; or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

19. WHEN MAY REPRESENTATIVES OF TEACHER ORGANIZATIONS ATTEND IEP MEETINGS?

Under FERPA officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the child's educational records may be discussed--except with the prior written consent of parents.

In addition, these rules do not provide for the participation of representatives of teacher organizations at IEP meetings. Attendance at IEP meetings should be limited to those who have an intense interest in the child. Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

20. WHEN MAY A CHILD WITH A DISABILITY ATTEND AN IEP MEETING?

Generally, a child with a disability should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be: (1) helpful in developing the IEP; and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting--as part of the "notice of meeting" --that they may invite their child to participate. (NOTE: The parents and agency should encourage older children with disabilities (particularly those at the secondary school level) to participate in their IEP meetings.)

21. DO THE PARENTS OF A CHILD WITH A DISABILITY RETAIN THE RIGHT TO ATTEND THE IEP MEETING WHEN THE CHILD REACHES THE AGE OF MAJORITY?

These rules are silent concerning any modification of the rights of a child with a disability's parents when the child reaches the age of majority.

22. MUST RELATED SERVICES PERSONNEL ATTEND IEP MEETINGS?

No. It is **not required** that they attend. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either: (1) attends the IEP meetings; or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. (NOTE: This written recommendation could be a part of the evaluation report.)

23. ARE AGENCIES REQUIRED TO USE A CASE MANAGER IN THE DEVELOPMENT OF AN IEP FOR A CHILD WITH A DISABILITY?

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for a child or for all children with disabilities served by the agency. Examples of the kinds of activities which case managers might carry out are: (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

24. FOR A CHILD WITH A SUSPECTED SPEECH-LANGUAGE IMPAIRMENT, WHO MUST REPRESENT THE EVALUATION TEAM AT THE IEP MEETING?

No specific person **must** represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose disability is a speech-language impairment, there may be no other evaluation personnel involved. These rules state:

> Children who have a speech-language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would: (1) evaluate each child with a speech-language impairment using procedures that are appropriate for the assessment and evaluation of children with a speech-language impairment; and (2) where necessary, make referrals for additional assessments needed to make an appropriate delivery of services decision.

25. WHAT IS THE ROLE OF THE PARENTS AT AN IEP MEETING?

The parents of a child with a disability are expected to be equal participants, along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents: (1) participate in the discussion about the child's need for special education and related services; and (2) join with the other participants in deciding what services the agency will provide to the child. (NOTE:

In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

26. WHAT IS THE ROLE OF A SURROGATE PARENT AT AN IEP MEETING?

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under these rules. Thus, the surrogate parent is entitled to: (1) participate in the child's IEP meeting; (2) see the child's education records; and (3) receive notice, grant consent, and invoke due process to resolve differences.

27. MUST THE PUBLIC AGENCY LET THE PARENTS KNOW WHO WILL BE AT THE IEP MEETING?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and who will be in attendance". Where possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (SEE Question 20, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

28. ARE PARENTS REQUIRED TO SIGN IEPS?

Parent signatures **are not required.** However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

The following are some of the ways in which IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting. (NOTE: This is useful for monitoring and compliance purposes.)

b. An IEP signed by the parents is one way to indicate that the parents approve the child's special education program. (NOTE: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. SEE Question 10, above.)

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

29. IF THE PARENT SIGNS THE IEP, DOES THE SIGNATURE INDICATE CONSENT FOR INITIAL DELIVERY OF SERVICES?

The parent's signature on the IEP would satisfy the consent requirement concerning initial delivery of services to the child only if the IEP includes a statement on initial delivery of services which meets the definition of "consent". "Consent" means that:

(a) the parent has been fully informed of all information relevant to the activity for which consent is sought;

(b) the parent understands and agrees in writing to the carrying out of the activity for which his/her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) the parent understands that the granting of consent is voluntary...and may be revoked at any time.

30. DO PARENTS HAVE THE RIGHT TO A COPY OF THEIR CHILD'S IEP?

Yes. These rules state that "the public agency shall provide the parent a copy of the child's IEP". In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself a reasonable time following the meeting.

31. MUST PARENTS BE INFORMED AT THE IEP MEETING OF THEIR RIGHT TO APPEAL?

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations, it would not be necessary for the agency to do so again at the IEP meeting.

- These rules state that "written notice ...must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational delivery of services of the child or the provision of a free appropriate public education to the child".

- The notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations.

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures.

Every effort should be made to resolve differences between parents and school staff without resorting to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing.

32. DOES THE IEP INCLUDE WAYS FOR PARENTS TO CHECK THE PROGRESS OF THEIR CHILDREN?

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a child's special educational program. That record includes agreed upon items, such as goal(s) and objectives, and the specific special education and related services to be provided to the child.

The goal(s) and objectives in the IEP should be helpful to both parents and school personnel, in a general way, checking on a child's progress in the special education program. (SEE Questions 36-42, below, regarding goal(s) and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress--through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

33. MUST IEPS INCLUDE SPECIFIC "CHECKPOINT INTERVALS" FOR PARENTS TO CONFER WITH TEACHERS AND TO REVISE OR UPDATE THEIR CHILDREN'S IEPS?

No. A child's IEP is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so. Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in these rules regarding agency responsibilities in initiating IEP meetings, including the following: (1) public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP; (2) there should be as many meetings a year as the child needs (SEE Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (SEE Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

34. IF THE PARENTS AND AGENCY ARE UNABLE TO REACH AGREEMENT AT AN IEP MEETING, WHAT STEPS SHOULD BE FOLLOWED UNTIL AGREEMENT IS REACHED?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of delivery of services to be followed) until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP **would** remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies when there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's delivery of services, but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended: (1) that the IEP be implemented in all areas in which there is agreement; (2) that the document indicate the points of disagreement; and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the delivery of services or kind of special education to be provided (e.g., one party proposes a self-contained delivery of services, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps: (1) remind the parents that they may resolve their differences through the due process procedures under these rules; (2) work with the parents to develop an interim course of action (in terms of delivery of services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (SEE Question 31, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency **may not** change the child's delivery of services unless the parents and agency agree otherwise. The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be in need of special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes delivery of services in a self-contained program, and the other proposes delivery of services in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree, as an interim measure: (1) to temporarily provide services to the child in either one of the proposed service delivery models at the meeting; or (2) to serve the child through some other temporary arrangement.

(2) A child with a disability is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education delivery of services for the child.

Unless the parents and agency agree otherwise, the child would remain in the current service delivery model. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's delivery of services) is being settled through due process.

(NOTE: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service **would** continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, unless the parents and agency agree to a change in the services, or until the issue is resolved.)

35. WHAT SHOULD BE INCLUDED IN THE STATEMENT OF THE CHILD'S PRESENT LEVELS OF EDUCATIONAL PERFORMANCE?

The statement of present levels of educational performance will be different for each child. Thus, determinations about the content of the statement for a child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement must accurately describe the effect of the child's disability on the child's performance in any area of education that is affected, including: (1) academic areas (reading, math, communication, etc.); and (2) nonacademic areas (daily life activities, mobility, etc.). (NOTE: Labels such as "intellectually disabled" or "deaf" may not be used as a substitute for the description of present levels of education performance.)

b. The statement must be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's evaluation might be included, where appropriate. However, the test scores should be: (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids); or (2) an explanation should be included. Whatever test results are used should reflect the impact of the disability on the child's performance. Thus, raw scores are not sufficient.

c. There must be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading skill, this problem must be addressed under both: (1) goal(s) and objectives, and (2) specific special education and related services to be provided to the child.

36. WHY ARE GOAL(S) AND OBJECTIVES REQUIRED IN THE IEP?

The regulatory requirements for including annual goal(s) and short-term objectives, and for having an annual review of a child's IEP, provide a mechanism for determining: (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program); and (2) whether the delivery of services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goal(s) and objectives in the IEP **are not** intended to be as specific as the goal(s) and objectives that are normally found in daily, weekly, or monthly instructional plans.

37. WHAT IS AN "ANNUAL GOAL(S)" IN AN IEP?

The annual goal(s) in the IEP is a statement which describes what a child with a disability can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 35, above, there must be a direct relationship between the annual goal(s) and the present levels of educational performance.

38. WHAT ARE "SHORT-TERM INSTRUCTIONAL OBJECTIVES" IN AN IEP?

"Short-term instructional objectives" (also called "IEP objectives") are measurable, intermediate steps between an child's present level of educational performance and the annual goal(s) that is established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goal(s), and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used: (1) to describe what a given child is expected to accomplish in a particular area within some specified time period; and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goal(s). These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

39. SHOULD THE IEP GOAL(S) AND OBJECTIVES FOCUS ONLY ON SPECIAL EDUCATION AND RELATED SERVICES, OR SHOULD THEY RELATE TO THE TOTAL EDUCATION OF THE CHILD?

IEP goal(s) and objectives are concerned primarily with meeting the needs of a child with a disability for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goal(s) and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's disability which interfere with learning and educational performance in school. For example, if a child with a learning disability is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goal(s) and objectives would be directed toward: (1) closing the gap between the child's indicated ability and current level of functioning; and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skill, by either: (1) correcting the disability;

or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goal(s) and objectives for a child with a severe disability would be more comprehensive and cover more of the child's school program than if the child has only a mild disability.

40. SHOULD THERE BE A RELATIONSHIP BETWEEN THE GOAL(S) AND OBJECTIVES IN THE IEP AND THOSE THAT ARE IN INSTRUCTIONAL PLANS OF SPECIAL EDUCATION PERSONNEL?

Yes. There should be a direct relationship between the IEP goal(s) and objectives for a given child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goal(s) and objectives: (1) sets the general direction to be taken by those who will implement the IEP; and (2) serves as the basis for developing a detailed instructional plan for the child. (NOTE: SEE Question 55, below, regarding the length of IEPs.)

41. WHEN MUST IEP OBJECTIVES BE WRITTEN---BEFORE DELIVERY OF SERVICES OR AFTER DELIVERY OF SERVICES?

IEP objectives **must** be written before delivery of services. Once a child with a disability begins a special education program, the teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

42. CAN SHORT-TERM INSTRUCTIONAL OBJECTIVES BE CHANGED WITHOUT INITIATING ANOTHER IEP MEETING?

These rules state that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and REVISING a child's IEP" (emphasis added). Since a change in short-term instructional objectives constitutes a revision of the child's IEP, the agency **must:** (1) notify the parents of the proposed change; and (2) initiate an IEP meeting. (NOTE, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls.)

43. MUST THE IEP INCLUDE ALL SPECIAL EDUCATION AND RELATED SERVICES NEEDED BY THE CHILD OR ONLY THOSE AVAILABLE FROM THE PUBLIC AGENCY?

Each public agency **must** provide a free appropriate public education to all children with disabilities under its jurisdiction. Therefore, the IEP for a child **must** include all of the specific special education and related services needed by the child. This means that the services **must** be listed in the IEP even if they are not directly available from the local agency, and **must** be provided by the agency through contract or other arrangements.

44. IS THE IEP A COMMITMENT TO PROVIDE SERVICES---i.e., MUST A PUBLIC AGENCY PROVIDE ALL OF THE SERVICES LISTED IN THE IEP?

Yes. Each child's IEP **must** include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP **must** be provided in order for the agency to be in compliance with these rules.

45. MUST THE PUBLIC AGENCY ITSELF DIRECTLY PROVIDE THE SERVICES SET OUT IN THE IEP?

The public agency responsible for the education of a child with a disability could provide IEP services to the child: (1) directly, through the agency's own staff resources; or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever state, local, federal, and private sources of support are available for those purposes. However, the service must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

46. DOES THE IEP INCLUDE ONLY SPECIAL EDUCATION AND RELATED SERVICES OR DOES IT DESCRIBE THE TOTAL EDUCATION OF THE CHILD?

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs. (NOTE: These rules define "special education" as specially designed instruction to meet the unique needs of a child with a disability, and "related services" as those which are necessary to assist the child to benefit from special education.)

For some children with disabilities, the IEP will only address a very limited part of their education (e.g., for a child with a speech-language impairment, the IEP would generally be limited to the child's speech-language impairment). For other children (e.g., those who are profoundly intellectually disabled), the IEP might cover their total education. An IEP for a child who has a physical disability with no intellectual disability might consist only of specially designed physical education. However, if the child also has an intellectual disability, the IEP might cover most of the child's education. (NOTE: The IEP is not intended to be detailed enough to be used as an instructional plan. (SEE Question 40, above.))

47. IF MODIFICATIONS ARE NECESSARY FOR A CHILD WITH A DISABILITY TO PARTICIPATE IN A REGULAR EDUCATION PROGRAM, MUST THEY BE INCLUDED IN THE IEP?

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications **must** be described in the child's IEP (e.g., for a child with a hearing impairment, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the child may participate, including physical education, art, music and vocational education.

48. WHEN MUST PHYSICAL EDUCATION (PE) BE DESCRIBED OR REFERRED TO IN THE IEP?

These rules state that "Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education". The following paragraphs: (1) set out some of the different PE program arrangements for children with disabilities; and (2) indicate whether, and to what extent, PE **must** be described or referred to in an IEP:

a. REGULAR PE WITH CHILDREN WHO ARE NOT DISABLED. If a child with a disability can participate fully in the regular PE program without any special modifications to compensate for the child's disability, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the child to be able to participate in that program, those modifications **must** be described in the IEP.

b. SPECIALLY DESIGNED PE. If a child with a disability needs a specially designed PE program, that program **must** be addressed in all applicable areas of the IEP (e.g., present levels of education performance, goal(s) and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the child's IEP.

c. PE IN SEPARATE FACILITIES. If a child with a disability is educated in a separate facility, the PE program for that child **must** be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the child and the type of PE program that is to be provided.

Thus, if a child is in a separate facility that has a standard PE program (e.g., a residential school for the deaf), and if it is determined that the child is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the child to participate, those modifications must be described in the IEP. Moreover, if the child needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (SEE paragraph "b." above.)

49. IF A CHILD WITH A DISABILITY IS TO RECEIVE VOCATIONAL EDUCATION, MUST IT BE DESCRIBED OR REFERRED TO IN THE CHILD'S IEP?

The answer depends on the kind of vocational education program to be provided. If a child with a disability is able to participate in the regular vocational education program without any modifications to compensate for the child's disability, it would not be necessary to include vocational education in the child's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the child to participate in that program, those modifications **must** be included in the IEP. Moreover, if the child needs a specially designed vocational education program, then vocational education **must** be described in all applicable areas of the child's IEP (e.g., present levels of educational performance, goal(s) and objectives and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

50. MUST THE IEP SPECIFY THE AMOUNT OF SERVICES OR MAY IT SIMPLY LIST THE SERVICES TO BE PROVIDED?

The amount of services to be provided **must** be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided **must** be: (1) appropriate to that specific service; and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgement of the service provider) without holding another IEP meeting. (NOTE: The parents should be notified whenever this occurs.)

51. MUST A CHILD'S IEP INDICATE THE EXTENT TO WHICH THE CHILD WILL BE EDUCATED IN THE GENERAL EDUCATIONAL PROGRAM?

Yes. These rules state that the IEP for each child with a disability must include a "statement of...the extent to which the child will be able to participate in general educational programs". One way of meeting this requirement is to indicate the percent of time the child will be spending in the general education program with children who are not disabled. Another way is to list the specific general education classes the child will be attending.

NOTE: If a child with a severe disability, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any noncurricular activities in which the child will be participating with children who are not disabled (e.g., lunch, assembly periods, club activities, and other special events).

52. CAN THE ANTICIPATED DURATION OF SERVICES BE FOR MORE THAN TWELVE MONTHS?

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goal(s) and short-term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service **must** be reconsidered whenever the IEP is reviewed.

53. MUST THE EVALUATION PROCEDURES AND SCHEDULES BE INCLUDED AS A SEPARATE ITEM IN THE IEP?

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they **must** be presented in a recognizable form and be clearly linked to the short-term objectives. (NOTE: In many instances, these components are incorporated directly into the objective.)

OTHER QUESTIONS ABOUT THE CONTENTS OF AN IEP

54. IS IT PERMISSIBLE FOR AN AGENCY TO HAVE THE IEP COMPLETED WHEN THE IEP MEETING BEGINS?

No. It **is not permissible** for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of: (1) the child's need for special education and related services; and (2) what services the agency will provide to the child. These rules define the IEP as a written statement DEVELOPED IN A MEETING with the agency representative, the teacher, the parent, and whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goal(s), short-term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. These rules make it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their children.

55. IS THERE A PRESCRIBED FORMAT OR LENGTH FOR AN IEP?

No. The format and length of an IEP are matters left to the discretion of local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 40, above, the IEP is not intended to be a detailed instructional plan. The IEP requirements can be met in a one to three page form.

56. IT IS PERMISSIBLE TO CONSOLIDATE THE IEP WITH AN INDIVIDUALIZED SERVICE PLAN DEVELOPED UNDER ANOTHER FEDERAL PROGRAM?

Yes. In instances where a child with a disability must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document, provided that: (1) it contains all of the information required in an IEP; and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) the Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)); (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)); (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)); and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

57. WHAT PROVISIONS ON CONFIDENTIALITY OF INFORMATION APPLY TO IEPS?

IEPs are subject to the confidentiality provisions of both: (1) these rules, and (2) FERPA. An IEP is an "educational record" as that term is used in FERPA and implementing regulations (34 C.F.R. Part 99) and is, therefore, subject to the same protections as other educational records relating to the child.

NOTE: Under Reg. 99.31(a) of FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a child without the written consent of the parents "if the disclosure is--(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests..." in that information.

58. IF DELIVERY OF SERVICES DECISIONS ARE MADE AT THE TIME THE IEP IS DEVELOPED, HOW CAN A PRIVATE SCHOOL REPRESENTATIVE ATTEND THE MEETING?

Generally, a child who requires delivery of services in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate delivery of services for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school delivery of services might be proposed--by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency **must** ensure that a representative of the residential school either: (1) attends the meeting; or (2) participates through individual or conference telephone calls, or by other means.

59. IS THE IEP A PERFORMANCE CONTRACT?

No. These rules make it clear that the IEP **is not** a performance contract that imposes liability on a teacher or public agency if a child with a disability does not meet the IEP objectives. While the agency **must** provide special education and related services in accordance with each child's IEP, these rules do not require that the agency, the teacher, or there persons be held accountable if the child does not achieve the growth projected in the written statement.

Special Education Program Units

For the purpose of the Public School Finance Act (22-8-1 to 22-8-42 NMSA 1978), special education programs for children with disabilities or who are gifted as specified by Chapter 5 of these rules are classified as follows: (A) Class A programs, in which department certified individuals provide services to children whose IEPs require a minimal amount of special education and in which the ratio of students to professionals is specified in Chapter 1 - Instruction - Staffing Patterns A.8.4.1 of these rules; (B) Class A ancillary programs provide related services to children with disabilities; (C) Class B programs, in which department certified individuals provide services to children whose IEPs require a moderate amount of special education and in which the ratio of students to professionals is specified in Chapter 1 -Instruction - Staffing Patterns A.8.4.2. of these rules; (D) Class C programs, in which department certified individuals provide services to children whose IEPs require an extensive amount of special education and in which the ratio of students to professionals is specified in Chapter 1 - Instruction - Staffing Patterns A.8.4.3 of these rules; (E) Class D programs, in which department certified individuals provide services to children whose IEPs require a maximum amount of special education and in which the ratio of students to professionals is specified in Chapter 1 - Instruction - Staffing Patterns A.8.4.4 of these rules; (F) Programs for preschool children with disabilities who are three and four years old.

Computation of program units shall be calculated for these programs as specified in the New Mexico State Department of Education Pupil Accounting Manual (1991) and the New Mexico State Department of Education Student Census Report (1991). Revisions to these published procedures require notice, public comment and/or public hearing prior to implementation.

For purposes of the Public School Finance Act (22-8-1 to 22-8-42 NMSA 1978), children with disabilities in State supported public programs placed by other public agencies shall not be reported by the LEA. These children are reported by the state supported public programs.

I certify that this regulation was approved by the State Board of Education on August 27, 1992.

ALAN D. MORGAN
State Superintendent of Public Instruction

APPENDIX D

GENERAL INFORMATION AND GUIDELINES FOR COMPLETING A SINGLE OR CONSOLIDATED APPLICATION

INDIVIDUALS WITH DISABILITIES EDUCATION ACT - PART B, AS AMENDED, PRESCHOOL
and
CHAPTER I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT
(STATE OPERATED PROGRAMS)
GRANT APPLICATIONS

NEW MEXICO STATE DEPARTMENT OF EDUCATION
SANTA FE, NEW MEXICO
MARCH, 1993

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TABLE OF CONTENTS

Introduction

Page

A. Eligible Applicants.. i
B. Application Due Date.. i
C. State Procedures for Reviewing/Approving Applications............ i
D. Notification of Application Status............................ ii
E. Disapproval of an Application and Opportunity for Hearing........ ii
F. Amendment of an Application.................................. iii
G. Carryover Period.. iii

PART I

General Information

A. Distribution of Funds.. 1
B. Allowable Uses of Project Funds................................ 2
C. Application Outline.. 4

PART II

Instructions for Completing a Single or Consolidated Application

A. Cover Sheet/Assurances.. 5
B. Local Benefits for Private School Students...................... 5
C Use of Project Funds.. 6
D. Budget Summary.. 7
E. Federal Program Budget.. 10

APPENDIX A

Forms

Cover Sheet/Assurances......................SDE 500A1, 500A2 and 500A3
Local Benefits for Private School Students................... SDE 500B
Use of Funds.. SDE 500C
Budget Summary.. SDE 500D
Federal Program Budget...................................... SDE 902B-1
Resource Sheet.. SDE 370-92

INTRODUCTION

The purpose of this document is to provide information to New Mexico Public Education Agencies on the submission of an application and the awarding of funds under the Individuals with Disabilities Education Act, Part B, (IDEA-B), Public Law 101-476, Public Law 102-119 and Chapter I of the Elementary and Secondary Education Act (ESEA) State Operated Programs (SOP) by Public Law 89-313.

A. ELIGIBLE APPLICANTS

Local Education Agencies (LEAs) and State Supported Educational Programs (SSEPs), which have completed required child count reports, are eligible to apply for funds under these grants.

Applicants for ESEA (SOP) funds are required to provide Free Appropriate Public Education (FAPE) and must be in compliance with IDEA-B. NOTE: IDEA-B Applications must not include objectives and activities for gifted students.

B. APPLICATION DUE DATE

APPLICATIONS FOR SINGLE AND CONSOLIDATED GRANTS MUST BE RECEIVED BY THE NEW MEXICO STATE DEPARTMENT OF EDUCATION (NMSDE), ROOM 123, IN THE STATE EDUCATION BUILDING, SANTA FE, NEW MEXICO 87501-2786 ON OR BEFORE MAY 10 of THE CURRENT FISCAL YEAR. Two (2) copies of each project application and one (1) copy of the SDE 902B-1 must be submitted, each with original signatures. The application must contain a submission of the LEA Policy and Procedures Manual. The manual must only be included once every three years after the May, 1991 submission unless the manual has changed at which time the revisions must be submitted for review. Applications conditionally approved in the prior fiscal year will not be approved for the current fiscal year until approval conditions are removed. Once approved by the NMSDE, policy and procedure manuals may not be changed without prior notification to the NMSDE.

C. STATE PROCEDURES FOR REVIEWING/APPROVING APPLICATIONS

The NMSDE reviews the applications and determines whether the following criteria have been met: 1) the application is submitted by an applicant that is entitled to receive funds under IDEA-B and/or ESEA (SOP) specified in the New Mexico State Plan and State Board of Education Regulations governing the establishment of Regional Center Cooperatives (RCCs) (SBE 84-6), if applicable; 2) the fiscal agent for a consolidated application for an RCC is authorized under the signed Joint Powers Agreement (JPA); 3) the application includes all required components; and 4) the application presents evidence that:

- The participants are implementing IDEA-B requirements;
- The methods of involvement and coordination with organizations and individuals who are concerned with the education of children with disabilities and representatives of private school students are documented, where applicable;

- The application was planned in consultation with teachers and school officials from regular and special education, representatives from private schools, parents of children with disabilities and other interested individuals or organizations representing all member LEAs and SSEPs. Advisory Councils, task forces, needs assessment instruments and long range planning processes may be utilized as a method of ensuring involvement opportunities in the application process;

- The project priorities proposed under the grant are consistent with projects and other activities within the LEA, RCC or SSEP that serves children with disabilities and;

- Issues of noncompliance with state and federal regulation which are addressed in the LEA, SSEP or RCC local long range plan are addressed in the local or consolidated IDEA-B or ESEA(SOP) local application.

The NMSDE approves applications which: 1) meet the above criteria; 2) indicate service comparability between State and local funded programs and IDEA-B and ESEA (SOP) projects (e.g., meet State and Federal Standards); 3) assure nonsupplanting and maintenance of effort in the operation of IDEA-B and ESEA (SOP) projects; 4) provide evidence of sufficient project scope to effectively meet the needs of children with disabilities; 5) provide evidence that the LEA, SSEP or RCC, through its participating agencies, is able to establish and maintain the projects presented in the application; and 6) satisfy any outstanding noncompliance issues.

D. NOTIFICATION OF APPLICATION STATUS

The NMSDE notification to LEAs, SSSs and/or RCCs of application approval or disapproval shall, unless otherwise notified in writing, occur on or before the following date: JUNE 30, of the current fiscal year. If this is not possible, the NMSDE shall provide written notification prior to June 30. The notification of approval from the NMSDE shall be in writing and will include: 1) the anticipated amount of the award; 2) the period during which the LEA, SSEP or RCC may obligate the funds; and 3) the federal requirements that apply to the award.

E. DISAPPROVAL OF AN APPLICATION AND OPPORTUNITY FOR A HEARING

The NMSDE shall not approve the application: 1) if an application does not meet the requirements of the Federal statutes and regulations that apply to the project; 2) if an application does not meet the requirements set forth in the IDEA-B State Plan and applicable State statutes, standards and regulations; 3) if an application does not correspond to the tentative award and available carryover; or 4) if the application does not include all the required components.

Before taking final action with respect to the disapproval of an application, in whole or in part, the NMSDE shall provide the applicant with notice and the opportunity for a hearing as specified in the IDEA-B State Plan and EDGAR (34 CFR 76.401).

F. AMENDMENT OF AN APPLICATION

If the applicant makes an amendment to its application which affects the scope or intent of the project, the applicant must follow the same procedure(s) it used to develop and submit the original application.

G. CARRYOVER PERIOD

If the applicant does not expend all of the current fiscal year allocation by June 30 of the current fiscal year, the applicant may request to budget the remaining funds during a carryover period of an additional fiscal year.

In addition, if the applicant anticipates having unliquidated carryover funds on June 30 of the current fiscal year, the applicant must submit a "List of Unliquidated Obligations" with the application. Please refer to Accounting Requirements for Federal Programs, Form SDE 567-91. These obligations must be liquidated by September 30.

Obligations made during a carryover period are subject to current laws, statutes, regulations and applications. The applicant is responsible to meet the carryover application provisions through a subsequent application for the fiscal year in which the funds will be used. No special carryover application is required. Funds will be treated on a first-in first-out basis.

PART ONE

GENERAL INFORMATION

IDEA-B
and
PRESCHOOL AND ESEA (SOP) GRANT APPLICATIONS

A. DISTRIBUTION OF FUNDS

The total state entitlement for a given fiscal year is based primarily on the prior year's December 1 Child Count of children with disabilities who received a free appropriate public education under an Individualized Education Program (IEP) which is in effect on that date. The funds are available for distribution as follows:

IDEA-B FUNDS

- 5% of the total is used for state administrative costs.
- 20% of the total is used in a discretionary manner to meet state priorities in providing appropriate services to students with disabilities.
- 75% of the total is entitlement to applicants.

PRESCHOOL FUNDS

- 5% of the total is used for state administrative costs.
- 20% of the total is used in a discretionary manner to meet state priorities in providing appropriate services to students with disabilities.
- 75% of the total is entitlement to applicants.

ESEA (SOP) FUNDS

- 100% of the total is entitlement to applicants.

PROJECT EXPANSION/REDUCTION

In the event that additional funds become available or that funds are reduced, applicants will be notified.

Upon notification from the NMSDE of increased/decreased funds, the applicant will be required to submit, as appropriate, an amended IDEA-B/ESEA (SOP) Application or an amendment to the application and required Form SDE 992.

STATE PLAN

The use of funds in the state must be consistent with the guidelines contained in the New Mexico State Plan and Preschool Application under IDEA-B; participation must be supplemental to programs operated under State and local funds

LOCAL PRIORITIES

Use of entitlement funds at the local level is based on the local needs documentation which provides the priorities for the use of funds in accordance with IDEA-B.

B. ALLOWABLE USES OF IDEA-B, PRESCHOOL AND ESEA (SOP) FUNDS

The proposed uses are presented under five components: 1) child identification and comprehensive evaluations; 2) personnel development; 3) free appropriate public education (FAPE); 4) full educational opportunity goal (FEOG); and 5) project administration and general provisions. NOTE: A consolidated application must reflect the unique needs of each member LEA. IDEA-B, Preschool and ESEA (SOP) funds may be used under one or combinations of these five components:

1. Child Identification and Comprehensive Evaluations

Each applicant is required to conduct Child Find activities. Each applicant is responsible for identifying, locating and evaluating children ages birth through twenty-one who may have a disability under these grants, including students in private schools and the home school and children who are not in school. These requirements may be met through the following activities: 1) preparation, printing and distribution of publicity materials (including media releases) to increase public awareness of disabilities and community services available; 2) new or continued screening activities to identify children who potentially may have a disability or a developmental delay; 3) preparation, printing and distribution of brochures describing special education programs and related services available and eligibility standards and referral procedures implemented by the applicant; 4) acquisition of testing and evaluation materials; 5) additional evaluations as needed to determine student needs and independent evaluations under required procedural safeguards; 6) substitute teacher costs to permit service providers the opportunity to participate in IEP meetings; 7) interpreters for parents who have a hearing impairment and/or translators for non-English speaking parents to assist during IEP activities related to the identification, evaluation and placement of children with disabilities and/or parent conferences; 8) assistance for educational evaluation teams in evaluating student needs for special education related services; and 9) assistance for applicants in evaluating children enrolled in private schools who may be or are suspected of having a disability under IDEA-B.

2. Personnel Development

Each applicant is required to conduct personnel development and information dissemination activities based on locally documented needs. These may include: 1) training for parents, general education teachers, Head Start teachers, all special education personnel, administrators and volunteers; 2) instruction in parenting skills; 3) personnel visits to other agencies and/or attendance at appropriate workshops and conferences; 4) coursework costs for personnel who participate in credit-bearing inservice or college/university courses related to special education early childhood programs; 5) visits of personnel to other agency programs or attendance at appropriate workshops and conferences based on direct professional responsibility for instruction of students with disabilities; 6) workshops, seminars or other agency inservice meeting costs (e.g., speakers, materials, stipends); 7) recruitment activities for special education and related services personnel; and 8) preparation, printing and distribution of special education guidelines, booklets, policies and procedures for agency personnel.

3. Provision of Special Education and Related Services/IEP Implementation

Free Appropriate Public Education (FAPE) must be available to all school age children with disabilities ages three through twenty-one, as appropriate, residing or present within the jurisdiction of each participating applicant. This may include: 1) purchase of educational supplies and curriculum related materials directly involved with implementing IEPs; 2) purchase of educational equipment directly related to the IEPs of children with disabilities; 3) purchase or construction of specialized equipment which permits children with disabilities to access and/or participate in public school programs; 4) adaptation of arts and vocational courses to permit participation of students with disabilities, including the purchase of appropriate controls for automobiles or other modified equipment; 5) coordination of school instruction with home instruction; 6) purchase of supplemental supervision of work places for secondary students with disabilities; 7) purchase of supplemental educational assistants for special education classes and licensed education assistants for related services personnel; employment of additional special education and related services personnel; 8) extended school year service(s); 9) lease/purchase, rental or modification of vehicles in which to transport children with disabilities between programs and/or sites required under an IEP; 10) transportation aides on applicant vehicles to assist children with disabilities to access vehicles when required under an IEP; 11) driver time/mileage to provide instructional travel for children with disabilities; 12) provision of parent/family services (e.g., counseling, instruction and accommodation techniques for parents, siblings and care providers of children with disabilities); 13) purchase of specialized motor development equipment and/or instruction by related services and/or instructional personnel; 14) instruction in sign language for parents, teachers and peers; and 15) lease or rental arrangements for temporary, moveable classroom space for special education programs.

4. Full Educational Opportunities Goal (FEOG)

FEOG includes children ages birth through twenty-one. For the Preschool Grant, FAPE applies to children with disabilities, ages three through five. This may include: 1) provision of special education and related services to children with disabilities enrolled in private schools; 2) acquisition of microcomputer technology to support the management of special education programs, including applicant record keeping and reporting of special education evaluation programs, grant projects, evaluation reports, IEP development and telecommunications for information sharing; 3) development of IEP goals and objectives' banks and curricula with attention to mastery standards and the selection or adoption of sequenced goals and objectives or curricula; 4) consultants to develop alternative programs and curricula approaches for students with disabilities; and 5) assistance in developing pre-vocational, transition and vocational instructional approaches for secondary students with disabilities.

5. IDEA-B and Preschool Grant Project Administration and General Provisions

Each applicant must administer the IDEA-B and Preschool Grant program covered by the application in accordance with all applicable statutes, regulations, standards, plans and applicable assurances. This may include: 1) provision of opportunities for the participation of teachers, parents, other interested individuals and agencies in planning, operation and evaluation of the grant projects; 2) dissemination of information regarding the application and its operation to the general public; 3) opportunities for involvement of the community in local needs assessment(s) and plan application development and implementation; 4) maintenance of project records; and 5) general supervision and oversight of IDEA-B and Preschool Grant projects. NOTE: The Handicapped Children's Protection Act of 1986 explicitly prohibits the use of IDEA-B funds to pay attorney fees and related costs awarded to parents by the courts as a result of the parents prevailing in a due process hearing and/or court action.

C. APPLICATION OUTLINE

1. Single Agency Basic Entitlement: Applicants for single agency IDEA-B entitlement must generate at least $7,500 to receive the 75% IDEA-B and Preschool entitlement funds. ESEA (SOP) has no entitlement limitations.

2. Consolidated Agency Basic Entitlement: All agencies which generate less than $7,500 of IDEA-B entitlement and apply for IDEA funds must be a member of a consolidated application. Agencies generating more than $7,500 may join an RCC and submit a consolidated application. Participating agencies in an RCC, for the Preschool Application, may select the same application option.

The following requirements are met by LEAs through annual submission of data to the NMSDE and/or through the development of the IDEA-B State Plan. These items are not required to be submitted with the application.

- Facilities, Personnel and Services: a) those currently available, and b) those needed to provide FAPE for children with disabilities ages three to twenty-one; and

- Inservice Training: The application must be consistent with the New Mexico Comprehensive System for Personnel Development (CSPD) and the New Mexico Long Range Plan for Special Education, "Vistas sin Limites". The applicant must maintain records which specify the following items: a) number and types of personnel to be trained; b) priority training topics; and c) contact hours. NOTE: Local needs must be identified in such a manner as to allow the applicant, at a minimum, to execute the application sections which address the personnel development items identified in this paragraph.

3. Contents of a Single Agency Application: Applicants must submit a completed and locally approved application, a completed and locally approved NMSDE 902B-1 and any policy and procedures manual revisions. NOTE: Applicants must submit one budget for each project: IDEA-B, Preschool and/or ESEA (SOP).

4. Contents of a Consolidated Agency Application: Applicants must submit a completed application which includes an NMSDE 902B-1 and any policy and procedures manual revisions. A copy of a fully executed Joint Powers Agreement (JPA) also must be submitted unless a JPA is currently on file with the NMSDE. NOTE: If the membership of the RCC is amended, a new JPA must be submitted to the NMSDE with the application. Applicants must submit one budget for each project: IDEA-B Entitlement, IDEA-B Discretionary and Preschool. In addition, applicants must submit one NMSDE 370-92 Resource Sheet for each RCC consolidated budget: Entitlement, Discretionary and Preschool.

PART II

INSTRUCTIONS FOR COMPLETING A SINGLE OR CONSOLIDATED APPLICATION

A. SINGLE OR CONSOLIDATED APPLICATION - IDEA-B, PRESCHOOL AND ESEA (SOP) GRANT FUNDS

DIRECTIONS: Submit NMSDE 500A1 or NMSDE 500A2 and NMSDE 500A3, as appropriate/ required, for each application.

Select the appropriate application cover sheet indicating a single or consolidated application.

Identification of Grant Year

Check box {x} and include the fiscal year for which IDEA-B, Preschool and/or ESEA (SOP) grant funds are sought. Insert the dollar amounts on the appropriate lines provided.

Identification of the applicant

Type or print the name of the applicant.

Date Submitted

Specify the date the application was mailed or hand delivered to the NMSDE.

Submission Statement

Complete the submission statement. Include the signature of the Superintendent(s). Specify the date(s) of the signature(s).

Contact Person

Include directory information on the individual whom the NMSDE should contact for additional information regarding the application.

Special Assurances

Include the attached assurance statements with the application. Signature(s) on cover sheet(s) assures that the agency(ies) is/are in full compliance with applicable state and federal regulations.

B. LOCAL BENEFITS FOR PRIVATE SCHOOL STUDENTS (34 CFR 76.650 and 34 CFR 300.452)

DIRECTIONS: Submit NMSDE 500B for each application. Duplicate as required in order to include one form for each agency participating within a consolidated application.

1. Describe activities used to assure participation of students with disabilities in private schools.

2. Enter the total number of private school students who have been identified as in need of special education.

3. Enter the total number of private school students who are identified with disabilities, in need of special education and are projected to receive services through projects under this application.

4. Describe the basis the applicant used to select the students to receive benefits.

194

5. Include the names of the private schools consulted and the places and times that the students will receive benefits.

6. Summarize the project benefits that are different for the private school children from the public school children and specify the reason(s) for the difference(s).

C. USE OF IDEA-B, PRESCHOOL AND ESEA (SOP) FUNDS

DIRECTIONS: NMSDE 500C describes the objectives the applicant intends to achieve through the use of IDEA-B/Preschool/ESEA Funds, the activities which will be conducted to achieve each objective, and the documentation that will be retained on file by the applicant to demonstrate that funds have indeed been used for the activities specified. A summary of funds, by budget function/object, also may be included.

It is intended that NMSDE 500C be produced completely on typewriter or computer. The applicant is not limited to the space provided on the sample provided in the application package. The applicant may choose to start a new page for each new objective statement. The objectives may be listed continuously in outline form. Either format is acceptable. A consolidated application must include a separate page for each participating LEA IDEA-B entitlement and preschool entitlement.

1. Heading:

   A separate page must be submitted for each of the following categories that are applicable to the applicant. A page does not have to be prepared for a category that is not applicable to the applicant. Objective pages for use of IDEA-B funds must be submitted on white paper. Pages for use of Preschool funds must be submitted on green paper. Pages for use of ESEA funds must be submitted on yellow paper.

   Heading choices are:

   USE OF IDEA-B FUNDS TO BENEFIT PUBLIC SCHOOL STUDENTS
   USE OF IDEA-B FUNDS TO BENEFIT PRIVATE SCHOOL STUDENTS

   USE OF PRESCHOOL FUNDS TO BENEFIT PUBLIC SCHOOL STUDENTS
   USE OF PRESCHOOL FUNDS TO BENEFIT PRIVATE SCHOOL STUDENTS

   USE OF ESEA FUNDS TO BENEFIT PUBLIC SCHOOL STUDENTS
   USE OF ESEA FUNDS TO BENEFIT PRIVATE SCHOOL STUDENTS

The second line of the NMSDE 500C must reflect the name of the LEA/RCC/SSEP. Follow the format provided on the sample.

2. Narrative description:

   a. Objective: A brief statement which specifically describes the purpose for the proposed expenditure of funds. Each objective from a single source for funds (IDEA-B, PRESCHOOL, ESEA) must be sequentially numbered, i.e., if an application contains objectives for use of funds from more than one source, there must be a listing of objectives for each source of funds which starts with Objective 1. This statement must describe the outcome anticipated once the activities which are subordinate to the objective are accomplished. The statement must include appropriate criterion by which the scope of the objective is to be evaluated. A measurement method also must be included in the objective statement if it is not implicit in the objective/activity statements. For example:

   Objective 1. To effectively accomplish administration of the IDEA-B grant (desired outcome) in accordance with applicable laws, statutes, regulations and state plan (criterion) as demonstrated by timely, accurate submission of all required reports and appropriate expenditure of authorized funds (measurement).

NOTE: The applicant is not required to submit a "report card" regarding accomplishment of objectives. The purpose for clear-cut objective statements is to provide a readily understandable statement of the applicant's plan, anticipated outcome and evaluation for expenditure of federal funds.

b. Activities (itemize): A brief description of each activity the applicant proposes to undertake to accomplish the stated objective. Each activity must be lettered consecutively (i.e. A, B,C,...) and must be specific enough to allow accurate tracking of funds to activities. For example, if two different positions are planned, each position must be specified as a separate activity to allow accurate audit of associated salaries and benefits. Equipment with a unit value over $500 (xxxx.6411) must be specified within the activity.

c. Documentation: Internal documents that may be used to provide an accurate audit of the funds actually expended in support of the stated objective. (e.g. purchase orders, vouchers, contracts, minutes of meetings, copies of newspaper articles).

d. Budget Components (optional): If the applicant chooses, each objective may be followed by a listing which specifies the funds planned to achieve the objective by budget function/object. Consolidated applications must delineate these funds into two columns, ENTITLEMENT and DISCRETIONARY as appropriate. For example, if two people were hired through a consolidated application, one from entitlement funds and one from discretionary funds, the table should appear as follows:

FUNCTION/OBJECT	ENTITLEMENT	DISCRETIONARY
02.1211	22,000	
02.1217		13,450
02.2111	1,640	1,022
02.2211	1,635	1,019
02.2311	1,853	556
02.2411	132	8
02.2511	50	30
TOTAL	27,310	16,085

3. Footing:

Each page of NMSDE 500C must have the designation (NMSDE 500C) and the application page number. All pages of an initial application must be sequentially numbered. Revisions that cause pages to be added to the original should be lettered (i.e Page 16.A, Page 16.B...). Revisions that cause pages to be deleted should be replaced with a page that states "THIS PAGE DELETED".

D. BUDGET SUMMARY

One NMSDE 500D must be submitted for each source of funds including entitlement and discretionary for a consolidated application. It must be included immediately following NMSDE 500C. This spreadsheet specifies an overall breakdown of funds from that source by budget function/object and objective. To keep the spreadsheet as compact as possible, do not include budget function/objects which do not have associated funds in the application. As with NMSDE 500C, it is intended that this page be completed using a typewriter or computer since the actual rows and columns of the spreadsheet will vary with each application.

If more added objectives are included than can be printed on a single page, multiple pages will be necessary. If so, the ROW titles (budget function/object numbers) must be repeated on each following page. There may also be too many function/objects to comfortably fit on a single page. If this is the case, multiple pages must be provided and the COLUMN headings must appear on each page.

A TOTAL column specifying the total funds required for each function/object must appear on the last page. A total must be provided for each objective (column) on the page.

If there are too many columns AND too many rows appearing on a single page, use multiple pages and arrange them such that all columns for a set of rows appear in order, followed by all columns for another set of rows.

1. Heading:

   A separate spreadsheet must be submitted for each of the following categories that are applicable to the applicant; however, a spreadsheet does not have to be prepared for a category that is not applicable to the applicant. Budget Summary pages for use of IDEA-B funds must be submitted on white paper. Pages for use of PRESCHOOL funds must be submitted on green paper. Pages for use of ESEA funds must be submitted on yellow paper.

   Heading alternatives are:

   IDEA-B BUDGET SUMMARY-ENTITLEMENT
   IDEA-B BUDGET SUMMARY-DISCRETIONARY
   PRESCHOOL BUDGET SUMMARY
   ESEA BUDGET SUMMARY

   The second line of NMSDE 500D must reflect the name of the LEA/RCC/SSEP, as appropriate. Follow the format specified on the sample form.

2. Column Headings: Each column except the budget function/object column must be labelled with the appropriate objective number from NMSDE 500C. The last column on the right must be labelled TOTAL.

3. Rows: One row must be included for each budget function/object for which expenditures are proposed. If no expenditures are proposed for a function/object, do not include it on the spreadsheet. After the last budget function/object, a row labelled TOTAL must be included which reflects the total funds proposed for each objective. The last column on the right of this row, must reflect the total of all proposed expenditures from this source of funds.

   After the TOTAL ROW, include a row entitled INDIRECT COST, if applicable. The single dollar figure entry for indirect cost must appear in the total column of this row. See paragraph 4 below for a detailed description of indirect cost calculation. Indirect cost is listed under SDE 902-B Administration .03.3713.

   If INDIRECT COST was calculated, include a following row entitled GRAND TOTAL. The grand total figure must appear in the TOTAL column, and must reflect the sum of the total expenditures and the indirect cost. This GRAND TOTAL must not exceed the total funds anticipated to be authorized from this source.

4. Including Indirect Costs in Application:
   Indirect costs reflect those funds retained by the Consolidated/Single applicant for general administration and are calculated as a percentage of all funds awarded as a result of the application less those funds programmed for capital outlay (budget function/object xxxx.6411). There are two general methods for calculating indirect costs.

a. The first method allows the applicant to work in reverse of the total proposed amount:

   1. Calculate the Indirect Cost Base Amount. Subtract the Capital Outlay funds (budget function/object xxxx.6411) from the total program allocation.

   2. Calculate the Indirect Cost. Divide the result by a factor equal to 1 plus the approved indirect cost rate expressed as a decimal (i.e. 3.9 percent equals .039). Subtract this result from the Indirect Cost Base Amount.

   3. Calculate Program Funds Available. Subtract the result from the above step. The result is the total amount that may be used to fund other activities in the application.

   EXAMPLE: The total program authorization is $100,000. The approved indirect cost rate is 3.9 percent. The programmed Capital Outlay is $10,000.

   Step 1. Indirect Cost Base Amount = $100,000 - $10,000 = $90,000

   Step 2. Indirect Cost = $90,000 - {$90,000(1+.039)} = $3,378

   Step 3. Funds Available = $90,000 - $3,378 = $86,622

b. The second method allows the applicant to calculate the indirect cost based on the total of funds proposed for activities if the following conditions exist: the entire allocation is not budgeted and sufficient funds are available to accommodate the indirect cost.

   1. Calculate Indirect Cost Base Amount. Total the funds programmed for all activities. Subtract any funds programmed for Capital Outlay (budget function/object xxxx.6411) from this total.

   2. Calculate Indirect Cost. Multiply the result from the previous step by the approved indirect cost rate. The result is the total indirect cost for the program.

   3. Calculate Total Program. Add the result from the step above to the total funds for all activities including Capital Outlay. The result is the total funding requested for the program.

EXAMPLE: The total of all proposed activities is $96,622. The programmed Capital Outlay is $10,000. The approved indirect cost rate is 3.9 percent.

Step 1. Indirect Cost Base Amount = $96,622 - $10,000 = $86,622

Step 2. Indirect Cost = $86,622 x .039 = $3,378

Step 3. Total Program = $86,622 + $10,000 + $3,378 = $100,000

5. Footing

Each page of NMSDE 500D must have the designation (NMSDE 500D) and application page number. All pages of an initial application must be numbered sequentially. Revisions that necessitate pages to be added to the original must be lettered (i.e Page 16.A, Page 16.B...). Revisions that necessitate pages to be deleted must be replaced with a page that states "THIS PAGE DELETED".

E. Federal Program Budget (NMSDE 902B-1)

For each source of fund(s), each application must include an NMSDE 902B-1 or a facsimile, with original signatures. Like NMSDE 500C and D, NMSDE 902B-1 must be color-coded based on the source of funds. This is the only form in the application package which includes FTE for personnel involved. It is important that FTE values be included on the NMSDE 902B-1. Please refer to Accounting Requirements For Federal Programs, State of New Mexico Department of Education, for further information regarding completion of NMSDE 902B-1.

SINGLE APPLICATION FOR A LOCAL EDUCATION AGENCY OR STATE SUPPORTED EDUCATIONAL PROGRAM INDIVIDUALS WITH DISABILITIES EDUCATION ACT - PART B, PRESCHOOL AND CHAPTER I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT (STATE OPERATED PROGRAMS)

GRANT APPLICATIONS

	Allocation	Carryover	Unliquidated	TOTAL
IDEA-B	$________	$__________	$__________	$______________
Preschool	$________	$__________	$__________	$______________
ESEA (SOP)	$________	$__________	$__________	$______________
TOTAL	$________	$__________	$__________	$______________

____________________ Applicant

____________________ Date Submitted

Submission Statement: This application was submitted to the Local School Board of the ____________________ School District on ______, 19__, and the district has elected to submit this application for the purpose of maximizing resources in meeting fully all obligations to children with disabilities of the the district under the Individuals with Disabilities Education Act-Part B. In conjunction with this submission, I certify that all assurances on the following pages have been met.

____________________ Superintendent Signature

__________ Date

Contact Person for IDEA-B and/or ESEA (SOP) Application:

Name:______________________________

Address:______________________________

____

____

Telephone: (505)______________________

Send to: New Mexico State Department of Education
Room 123
Education Building
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

SUBMIT:
- NMSDE 902B-1 for IDEA-B Allocation
- NMSDE 902B-1 for Preschool Allocation
- NMSDE 902B-1 for ESEA Allocation
- LEA/SSEP Policy and Procedures Manual (if applicable)
- 2 Copies of the Application for each project

NMSDE 500A1

INDIVIDUALS WITH DISABILITIES EDUCATION ACT PART-B AND PRESCHOOL GRANT APPLICATION

	Allocation	Carryover	Unliquidated	Total
DEA-B Entitlement	$________	$________	$________	$________
A-B Discretionary	$________	$________	$________	$________
eschool	$________	$________	$________	$________
ESEA (SOP)	$________	$________	$________	$________
TOTAL	$________	$________	$________	$________

Submitted by:________________________
Applicant

____
Date Submitted

Submission Statement: The following Local Boards of Education have by resolution elected to submit a consolidated application for the purpose of maximizing resources in meeting fully all obligations to children with disabilities of their respective districts under the Individuals with Disabilities Education Act-Part B. In conjunction with this submission, each superintendent certifies that all assurances on the following pages have been met.

All Participating Districts:

School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
hool District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date
School District	Superintendent Signature	Date

Contact Person: Name __________________
Address: __________________
Telephone: __________________

SUBMIT:
- NMSDE 902B-1 for IDEA-B Discretionary Allocations
- NMSDE 902B-1 for IDEA-B Entitlement Allocations
- NMSDE 902B-1 for Preschool Allocations
- NMSDE 370-92 Resource Page for each IDEA-B Allocations
- RCC Policy and Procedures Manual (if applicable)
- 2 Copies of the Application for each project

State Department of Education
Room 123
Education Building
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

NMSDE 500 A2

NEW MEXICO STATE DEPARTMENT OF EDUCATION
INDIVIDUALS WITH DISABILITIES EDUCATION ACT - PART-B
SPECIAL ASSURANCES

1. Federal Program General Assurances:

The applicant assures that it has Federal Program General Assurances on file with the New Mexico State Department of Education. The applicant acknowledges that the Federal Program General Assurances are incorporated herein by reference as though fully met forth herein. The applicant has a current policy and procedures manual on file with the Department.

2. Child Identification (34 CFR 330.220):

Each applicant ensures that all children residing in its jurisdiction and in need of special education and related services are identified, located and evaluated.

3. Full Educational Opportunities Goal (34 CFR 300.222):

Each applicant has the goal of providing full educational opportunity to all children with disabilities residing within its jurisdiction, aged birth through 21. This application requirement is met by the submission of the Annual Report and Child Count submitted to the Department. These data are reviewed by the Department prior to award of funds under this application to ensure compliance with all requirements.

4. Free Appropriate Public Education (34 CFR 300.121):

Each applicant ensures that all children with disabilities ages 3-21 have the right to a free appropriate public education.

5. Comprehensive System of Personnel Development (34 CFR 300.224):

Each applicant assures the State that it will implement and use the comprehensive system of personnel development established by the New Mexico IDEA-B State Plan. The local plan is predicated upon needs documentation and is inclusive of both professional and nonprofessional personnel, annually determined and prioritized goals, time lines, specific incentives and evaluation of outcomes. This application requirement is met by the submission of the Annual Report and Child Count submitted to the Department. These data are reviewed by the Department prior to award of funds under this application to ensure compliance with all requirements.

6. Parent Involvement (34 CFR 300.226):

Each applicant insures that in meeting the full educational opportunity goal, provision is made for participation of and consultation with parents or guardians of children with disabilities.

7. Participation in Regular Education Programs (34 CFR 300.227:

Each applicant has procedures to insure that, to the maximum extent practicable, special services are provided to enable children with disabilities to participate in regular educational programs. This application requirement is met by the submission of the Annual Report and Child Count submitted to the Department. These data are reviewed by the Department prior to award of funds under this application to ensure compliance with all requirements.

8. Confidentiality (34 CFR 300.221):

Procedures are implemented to insure management of all student specific confidential information pursuant to the New Mexico IDEA-B State Plan.

9. Procedural Safeguards (34 CFR 300.237; 300.500; 300.530 through 300.532 and 300.534):

Each applicant has adopted and implements the procedural safeguards and protection in evaluation procedures described in the New Mexico IDEA-B State Plan and the Standards for Excellence for New Mexico Schools Compliance Manual.

10. Placement Procedures (34 CFR 300.533):

Each applicant insures that multiple criteria are used and considered in placement decisions of a child and that the placement decision is made by a group of people in conformity with least restrictive environment (LRE) regulations.

11. Excess Cost Assurance (34 CFR 300.229):

Each applicant assures that funds provided under IDEA-B are used only for costs which exceed the amounts computed according to 34 CFR 300.184 and which are directly attributable to the cost of educating children with disabilities.

12. Maintenance of Effort/Nonsupplanting (34 CFR 300.230):

Each applicant assures funds used shall supplement and, to the extent practicable, increase the level of federal, state and local funds expended for the education of children with disabilities and in no case supplant federal, state and local funds.

13. Comparability (34 CFR 300.231)

No applicant will use funds under IDEA-B to provide services to children with disabilities unless it uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other children with disabilities in that local educational agency.

14. Use of Funds Assurances:

a. The LEA assures it uses IDEA-B funds only for excess costs which are directly attributable to the education of children with disabilities.

b. The LEA assures it uses IDEA-B funds to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities and in no case to supplant State and local funds.

c. The LEA assures it may not use IDEA-B funds to provide services to children with disabilities unless the agency uses State and local funds to provide services to those children which, taken as whole, are at least comparable to services provided to other children with disabilities in the LEA.

LOCAL BENEFITS FOR PRIVATE SCHOOL STUDENTS

Applicant ______________________________
Participating LEA/SSEP: ___________________

Person Responsible
for Completing Form: ____________________

1. How will the applicant meet federal requirements for participation of students enrolled in private schools?

2. How many students with disabilities in private schools have been identified as in need of special education?

   (______) students

3. How many students with disabilities and in need of special education are projected to receive benefits under the IDEA-B application?

   (______) students

4. What basis did the LEA use to select the students to receive services?

5. Include the names of the private schools consulted and the place and time that the students will receive benefits.

6. What are the differences in IDEA-B project benefits between the public and private schools students, if any, and the reasons for the differences?

NMDE 500B

SAMPLE

USE OF IDEA-B FUNDS TO BENEFIT PUBLIC SCHOOL STUDENTS

RCC/LEA/SSEP:____________

Objective 1: An objective to be achieved through expenditure of these funds must be stated here.

A. The first activity supporting the stated objective.

B. Next Activity.

Documentation: e.g. Contracts, payroll records, purchase orders, Minutes of meetings, copies of newspaper articles

Budget Components: Function/Object	Entitlement	Discretionary
TOTAL		

Objective 2: Next Objective Statement.

A. The first activity supporting Objective 2.

Documentation: e.g. Contracts, payroll records, purchase orders

Budget Components: Function/Object	Entitlement	Discretionary
TOTAL		

NOTE: This page is a sample intended only to reflect format. Refer to the specific instructions for completion of NMSDE 500C before preparing this page. **DO NOT USE THIS PAGE.**

NMSDE 500C

SAMPLE

SPREADSHEET

IDEA-B BUDGET SUMMARY-ENTITLEMENT

RCC/LEA/SSEP:___________

Function/ Object	Obj 1	Obj 2	Obj 3	Obj 4	TOTAL
01.1612	____	_____	_____	_____	________
01.5113	____	_____	_____	_____	________
02.4118	____	_____	_____	_____	________
TOTAL	____	_____	_____	_____	________
INDIRECT COST					________
GRAND TOTAL					________

NOTE: This spreadsheet is a sample intended only to reflect format. Refer to the specific instructions for completion of NMSDE 500D before preparing this page. DO NOT USE THIS PAGE.

DOCUMENT ID#	
VENDER CODE:	
DISTRICT CODE:	

STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION

PROGRAM BUDGET
SDE 902B-92

FISCAL YEAR__________

REVENUE CODE:	COUNTY :
FUNDING CODE:	BUDGET PERIOD:
CARRYOVER:	$
CURRENT YEAR ALLOCATION:	$
TOTAL BUDGET AMOUNT:	$

(As per Section 22-8-5, NMSA, 1978 Compilation)

		FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
ENTITY:			
PROGRAM NAME:			
EXPENDITURE CLASSIFICATION			
01	DIRECT INSTRUCTION		
1000	**PERSONNEL SERVICES**		
1411	Teachers-Grades 1-12		
1412	Teachers-Special Education		
1413	Teachers-Early Childhood Educ.		
1611	Substitutes-Sick Leave		
1612	Substitutes-Other Leave		
1613	Separation Pay		
1711	Instr. Assts. Grades 1-12		
1712	Instr. Assts. Special Educ.		
1713	Instr. Assts. Early Child. Ed.		
01 2000	**EMPLOYEE BENEFITS**		
2111	ERA		
2112	ERA-Retiree Health		
2211	FICA Taxes		
2212	Medicare		
2311	Health/Medical		
2312	Life		
2313	Dental		
2314	Vision		
2315	Disability		
2316	Other Insurances		
2411	Worker's Compensation Prem.		
2412	Worker's Comp. Employer's Fee		

ENTITY:		FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
PROGRAM NAME:			
EXPENDITURE CLASSIFICATION			
	2413 Worker's Comp. (Self Insured)		
	2511 Unemployment Ins. Prem.		
	2911 Cafeteria Plan Fees		
	2912 Employee Assistance Programs		
	2913 Worker's Comp. Employee Fee		
01	3000 PURCHASED SERVICES		
	3314 Contracts – Interagency		
	3315 Other Contract Services		
01	4000 SUPPLIES & MATERIALS		
	4111 Instructional Materials Cash		
	4112 Other Text Books		
	4113 Software		
	4118 General Supplies & Materials		
01	5000 TRAVEL & TRAINING		
	5113 Employee Travel		
	5114 Employee Training		
	5117 Student Travel		
01	6000 CAPITAL OUTLAY		
	6411 Fixed Assets ($500 and over)		
	6412 Supply Assets (under $500)		
01	SUBTOTAL DIRECT INSTRUCTION		
02	INSTRUCTIONAL SUPPORT		
	1000 PERSONNEL SERVICES		
	1112 Principals		
	1211 Coordinators/Subj.Mat. Spec.		
	1212 Library/Media Specialists		
	1213 Library/Media Assistants		
	1214 Guidance Counselors		
	1215 Registered Nurses		
	1216 Health Assistants		
	1217 Sec./Clerical/Tech. Assists.		
	1218 Attendance/Liaison Officers		
	1219 Duty Personnel		
	1311 Diagnosticians		
	1312 Speech Therapists		
	1313 Occupational Therapists		
	1314 Physical Therapists		
	1315 Psychologists		
	1316 Audiologists		
	1317 Interpreters		
	1318 Orientation & Mobility Sp.		
	1319 Bus Assistants		
	1511 Data Processing		
	1611 Substitutes–Sick Leave		

ENTITY:	FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
PROGRAM NAME:		
EXPENDITURE CLASSIFICATION		
1612 Substitutes-Other Leave		
1613 Separation Pay		
1623 Crosswalk Guards		
02 2000 EMPLOYEE BENEFITS		
2111 ERA		
2112 ERA-Retiree Health		
2211 FICA Taxes		
2212 Medicare		
2311 Health/Medical		
2312 Life		
2313 Dental		
2314 Vision		
2315 Disability		
2316 Other Insurances		
2411 Worker's Compensation Prem.		
2412 Worker's Comp. Employer's Fee		
2413 Worker's Comp. (Self Insured)		
2511 Unemployment Ins. Prem.		
2911 Cafeteria Plan Fees		
2912 Employee Assistance Programs		
2913 Worker's Comp. Employee Fee		
02 3000 PURCHASED SERVICES		
3111 Diagnosticians-Contracted		
3112 Speech Therapists-Contracted		
3113 Occupational Therapists-Contracted		
3114 Physical Therapists-Contracted		
3115 Psychologists-Contracted		
3116 Audiologists-Contracted		
3117 Interpreters-Contracted		
3118 Orientation & Mobility Sp.-Contr.		
3214 Other Professional Services		
3314 Contracts – Interagency		
3315 Other Contract Services		
3711 Other Charges		
02 4000 SUPPLIES & MATERIALS		
4113 Software		
4114 Library/Audio Visual		
4118 General Supplies & Materials		
02 5000 TRAVEL & TRAINING		
5113 Employee Travel		
5114 Employee Training		
5117 Student Travel		
02 6000 CAPITAL OUTLAY		
6411 Fixed Assets ($500 and over)		
6412 Supply Assets (under $500)		

			FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
ENTITY:				
PROGRAM NAME:				
		EXPENDITURE CLASSIFICATION		
02		SUBTOTAL INSTR. SUPPORT		
03		ADMINISTRATION		
	1000	PERSONNEL SERVICES		
	1111	Superintendent		
	1113	Administrative Associates		
	1114	Administrative Assistants		
	1217	Sec./Clerical/Tech. Assists.		
	1511	Data Processing		
	1611	Substitutes-Sick Leave		
	1612	Substitutes-Other Leave		
	1613	Separation Pay		
03	2000	EMPLOYEE BENEFITS		
	2111	ERA		
	2112	ERA-Retiree Health		
	2211	FICA Taxes		
	2212	Medicare		
	2311	Health/Medical		
	2312	Life		
	2313	Dental		
	2314	Vision		
	2315	Disability		
	2316	Other Insurances		
	2411	Worker's Compensation Prem.		
	2412	Worker's Comp. Employer's Fee		
	2413	Worker's Comp. (Self Insured)		
	2511	Unemployment Ins. Prem.		
	2911	Cafeteria Plan Fees		
	2912	Employee Assistance Programs		
	2913	Worker's Comp. Employee Fee		
03	3000	PURCHASED SERVICES		
	3211	Auditing		
	3212	Bond/Board Election		
	3213	Legal		
	3214	Other Professional Services		
	3314	Contracts - Interagency		
	3315	Other Contract Services		
	3511	Rent & Leases		
	3711	Other Charges		
	3712	County Tax Collection Fee		
03	3713	Indirect Cost		
	3714	Govern. Gross Receipts Tax		
03	4000	MATERIALS & SUPPLIES		
	4113	Software		
	4115	Board Expense		

			FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
ENTITY:				
PROGRAM NAME:				
EXPENDITURE CLASSIFICATION				
	4118	General Supplies & Materials		
03	**5000**	**TRAVEL & TRAINING**		
	5111	Board Travel		
	5112	Board Training		
	5113	Employee Travel		
	5114	Employee Training		
03	**6000**	**CAPITAL OUTLAY**		
	6411	Fixed Assets ($500 and over)		
	6412	Supply Assets (under $500)		
03		SUBTOTAL ADMINISTRATION		
04		SUPPORT SERVICES		
	1000	**PERSONNEL SERVICES**		
	1115	Assoc. Super. Fin/Bus Mgr.		
	1217	Sec./Clerical/Tech. Assist.		
	1220	Business Office Support		
	1511	Data Processing		
	1611	Substitutes-Sick Leave		
	1612	Substitutes-Other Leave		
	1613	Seperation Pay		
	1616	Warehouse/Delivery		
04	**2000**	**EMPLOYEE BENEFITS**		
	2111	ERA		
	2112	ERA-Retiree Health		
	2211	FICA Taxes		
	2212	Medicare		
	2311	Health/Medical		
	2312	Life		
	2313	Dental		
	2314	Vision		
	2315	Disability		
	2316	Other Insurances		
	2411	Worker's Compensation Prem.		
	2412	Worker's Comp. Employer's Fee		
	2413	Worker's Comp. (Self Insured)		
	2511	Unemployment ins. Prem.		
	2911	Cafeteria Plan Fees		
	2912	Employee Assistance Programs		
	2913	Worker's Comp. Employee Fee		
04	**3000**	**PURCHASED SERVICES**		
	3214	Other Professional Services		
	3314	Contracts - Interagency		
	3315	Other Contract Services		
	3511	Rent & Leases		
	3611	M&R/Furn/Fixtures/Equip.		

		FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
ENTITY:			
PROGRAM NAME:			
	EXPENDITURE CLASSIFICATION		
	3711 Other Charges		
04	**4000 SUPPLIES & MATERIALS**		
	4113 Software		
	4118 General Supplies & Materials		
04	**5000 TRAVEL & TRAINING**		
	5113 Employee Travel		
	5114 Employee Training		
04	**6000 CAPITAL OUTLAY**		
	6411 Fixed Assets ($500 and over)		
	6412 Supply Assets (under $500)		
04	SUBTOTAL SUPPORT SERVICES		
05	OPERATIONS/MAINTENANCE OF PLANT		
	1000 PERSONNEL SERVICES		
	1113 Administrative Associates		
	1114 Administrative Assistants		
	1217 Sec/Clerical/Tech. Assists.		
	1611 Substitutes-Sick Leave		
	1612 Substitutes-Other Leave		
	1613 Unused Annual Leave		
	1614 Maintenance		
	1615 Custodial		
05	**2000 EMPLOYEE BENEFITS**		
	2111 ERA		
	2112 ERA-Retiree Health		
	2211 FICA Taxes		
	2212 Medicare		
	2311 Health/Medical		
	2312 Life		
	2313 Dental		
	2314 Vision		
	2315 Disability		
	2316 Other Insurances		
	2411 Worker's Compensation Prem.		
	2412 Worker's Comp. Employer's Fee		
	2413 Worker's Comp. (Self Insured)		
	2511 Unemployment Ins. Prem.		
	2911 Cafeteria Plan Fees		
	2912 Employee Assistance Programs		
	2913 Worker's Comp. Employee Fee		
05	**3000 PURCHASED SERVICES**		
	3313 Property/Liability Insurance		
	3314 Contracts-Inter Agency		
	3315 Other Contract Services		
	3411 Electricity		

ENTITY:		FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
PROGRAM NAME:			
EXPENDITURE CLASSIFICATION			
	3412 Bldg. Heat/Natural Gas		
	3413 Bldg. Heat/Propane/Butane		
	3414 Bldg. Heat/Other		
	3415 Water/Sewage		
	3416 Communications		
	3511 Rents & Leases		
	3611 M&R/Furn/Fixtures/Equipment		
	3612 M&R/Buildings & Grounds		
	3613 M&R/Vehicles		
	3614 M&R/Buses		
	3711 Other Charges		
05	**4000 SUPPLIES & MATERIALS**		
	4113 Software		
	4118 General Supplies & Materials		
	4211 Gasoline		
	4212 Diesel		
	4213 Propane/Natural Gas		
	4214 Lubricant/Anti-freeze		
	4215 Tires/Tubes		
	4216 Maintenance Supplies/Parts		
05	**5000 TRAVEL & TRAINING**		
	5113 Employee Travel		
	5114 Employee Training		
05	**6000 CAPITAL OUTLAY**		
	6411 Fixed Assets ($500 and over)		
	6412 Supply Assets (under $500)		
05	SUBTOTAL OPER./MAINT. PLANT		
06	FOOD SERVICES		
	1000 PERSONNEL SERVICES		
	1113 Administrative Associates		
	1114 Administrative Assistants		
	1217 Sec./Clerical/Tech. Assists.		
	1611 Substitutes-Sick Leave		
	1612 Substitutes-Other Leave		
	1613 Separation Pay		
	1617 Food Service		
06	**2000 EMPLOYEE BENEFITS**		
	2111 ERA		
	2112 ERA-Retiree Health		
	2211 FICA Taxes		
	2212 Medicare		
	2311 Health/Medical Insurance		
	2312 Life		

		FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
ENTITY:			
PROGRAM NAME:			
	EXPENDITURE CLASSIFICATION		
	2313 Dental		
	2314 Vision		
	2315 Disability		
	2316 Other Insurances		
	2411 Worker's Compensation Prem.		
	2412 Worker's Comp. Employer's Fee		
	2413 Worker's Comp. (Self Insured)		
	2511 Unemployment Ins. Prem.		
	2911 Cafeteria Plan Fees		
	2912 Employee Assistance Programs		
	2913 Worker's Comp. Employee Fee		
06	**3000 PURCHASED SERVICES**		
	3211 Auditing		
	3213 Legal		
	3214 Other Professional Services		
	3314 Contracts - Inter Agency		
	3315 Other Contract Services		
	3411 Electricity		
	3412 Bldg. Heat-Natural Gas		
	3413 Bldg. Heat-Propane/Butane		
	3414 Bldg. Heat-Other		
	3415 Water/Sewage		
	3416 Communications		
	3611 M&R/Furn/Fixtures/Equipment		
	3612 M&R/Buildings & Grounds		
	3613 M&R/Vehicles		
	3711 Other Charges		
	3714 Govern. Gross Receipts Tax		
06	**4000 SUPPLIES & MATERIALS**		
	4113 Software		
	4116 Food		
	4117 Non Food Items		
	4118 General Supplies & Materials		
06	**5000 TRAVEL & TRAINING**		
	5113 Employee Travel		
	5114 Employee Training		
06	**6000 CAPITAL OUTLAY**		
	6411 Fixed Assets ($500 and over)		
	6412 Supply Assets (under $500)		
06	SUBTOTAL FOOD SERVICES		
07	ATHLETICS		
	1000 PERSONNEL SERVICES		
	1113 Administrative Associates		
	1114 Administrative Assistants		

ENTITY: PROGRAM NAME: EXPENDITURE CLASSIFICATION			FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
	1217	Sec./Clerical/Tech. Assists.		
	1613	Separation Pay		
	1618	Athletics Salaries		
	1622	Bus Drivers		
07	2000	**EMPLOYEE BENEFITS**		
	2111	ERA		
	2112	ERA–Retiree Health		
	2211	FICA Taxes		
	2212	Medicare		
	2311	Health/Medical		
	2312	Life		
	2313	Dental		
	2314	Vision		
	2315	Disability		
	2316	Other Insurances		
	2411	Worker's Compensation Prem.		
	2412	Worker's Comp. Employer's Fee		
	2413	Worker's Comp. (Self Insured)		
	2511	Unemployment Ins. Prem.		
	2911	Cafeteria Plan Fees		
	2912	Employee Assistance Programs		
	2913	Worker's Comp. Employee Fee		
07	3000	**PURCHASED SERVICES**		
	3314	Contract – Interagency		
	3315	Other Contract Services		
	3711	Other Charges		
07	4000	**SUPPLIES & MATERIALS**		
	4118	General Supplies and Materials		
07	5000	**TRAVEL & TRAINING**		
	5113	Employee Travel		
	5114	Employee Training		
	5117	Student Travel		
07	6000	**CAPITAL OUTLAY**		
	6411	Fixed Assets ($500 and over)		
	6412	Supply Assets (under $500)		
07	SUBTOTAL ATHLETICS			
08	NON INSTR. SUPPORT			
	1000	**PERSONNEL SERVICES**		
	1113	Administrative Associates		
	1114	Administrative Assistants		
	1217	Secretarial/Clerical Assists.		
	1622	Bus Drivers		
	1624	Activities Salaries		
08	2000	**EMPLOYEE BENEFITS**		

ENTITY:		FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
PROGRAM NAME:			
	EXPENDITURE CLASSIFICATION		
	2111 ERA		
	2112 ERA–Retiree Health		
	2211 FICA Taxes		
	2212 Medicare		
	2311 Health/Medical		
	2312 Life		
	2313 Dental		
	2314 Vision		
	2315 Disability		
	2316 Other Insurances		
	2411 Worker's Compensation Prem.		
	2412 Worker's Comp. Employer's Fee		
	2413 Worker's Comp. (Self Insured)		
	2511 Unemployment Ins. Prem.		
	2911 Cafeteria Plan Fees		
	2912 Employee Assistance Programs		
	2913 Worker's Comp. Employee Fee		
08	**3000 PURCHASED SERVICES**		
	3314 Contract – Interagency		
	3315 Other Contract Services		
	3711 Other Charges		
08	**4000 SUPPLIES & MATERIALS**		
	4118 General Supplies and Materials		
08	**5000 TRAVEL & TRAINING**		
	5113 Employee Travel		
	5114 Employee Training		
	5117 Student Travel		
08	**6000 CAPITAL OUTLAY**		
	6411 Fixed Assets ($500 and over)		
	6412 Supply Assets (under $500)		
08	SUBTOTAL NON INSTR. SUPPORT		
09	COMMUNITY SERVICES		
	1000 PERSONNEL SERVICES		
	1613 Separation Pay		
	1619 Adult Education		
	1620 Recreation		
	1621 Summer School/After School		
	1622 Bus Drivers		
09	**2000 EMPLOYEE BENEFITS**		
	2111 ERA		
	2112 ERA–Retiree Health		
	2211 FICA Taxes		
	2212 Medicare		
	2311 Health/Medical		

ENTITY:		FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
PROGRAM NAME:			
	EXPENDITURE CLASSIFICATION		
	2312 Life		
	2313 Dental		
	2314 Vision		
	2315 Disability		
	2316 Other Insurances		
	2411 Worker's Compensation Prem.		
	2412 Worker's Comp. Employer's Fee		
	2413 Worker's Comp. (Self Insured)		
	2511 Unemployment Ins. Prem.		
	2911 Cafeteria Plan Fees		
	2912 Employee Assistance Programs		
	2913 Worker's Comp. Employee Fee		
09	**3000 PURCHASED SERVICES**		
	3111 Diagnosticians-Contracted		
	3112 Speech Therapists-Contracted		
	3113 Occupational Therapists-Contracted		
	3114 Physical Therapists-Contracted		
	3115 Psychologists-Contracted		
	3116 Audiologists-Contracted		
	3117 Interpreters-Contracted		
	3118 Orientation & Mobility Sp.-Contract		
	3313 Property/Liability Insurance		
	3314 Contract - Interagency		
	3315 Other Contract Services		
	3711 Other Charges		
09	**4000 SUPPLIES & MATERIALS**		
	4118 General Supplies and Materials		
09	**5000 TRAVEL & TRAINING**		
	5113 Employee Travel		
	5114 Employee Training		
	5117 Student Travel		
09	**6000 CAPITAL OUTLAY**		
	6411 Fixed Assets ($500 and over)		
	6412 Supply Assets (under $500)		
09	SUBTOTAL COMMUNITY SERVICES		
10	TRANSPORTATION SERVICES		
	1000 PERSONAL SERVICES		
	1113 Administrative Associates		
	1114 Administrative Assistants		
	1217 Sec./Clerical/Tech. Assists.		
	1319 Bus Assistants		
	1611 Substitutes-Sick Leave		
	1612 Substitutes-Other Leave		
	1613 Separation Pay		

ENTITY:			FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
PROGRAM NAME:				
EXPENDITURE CLASSIFICATION				
	1614	Maintenance Personnel		
	1615	Custodial Personnel		
	1622	Bus Drivers		
10	2000	EMPLOYEE BENEFITS		
	2111	ERA		
	2112	ERA-Retiree Health		
	2211	FICA Taxes		
	2212	Medicare		
	2311	Health/Medical		
	2312	Life		
	2313	Dental		
	2314	Vision		
	2315	Disability		
	2316	Other Insurances		
	2411	Worker's Compensation Prem.		
	2412	Worker's Comp. Employer's Fee		
	2413	Worker's Comp. (Self Insured)		
	2511	Unemployment Ins. Prem.		
	2911	Cafeteria Plan Fees		
	2912	Employee Assistance Programs		
	2913	Worker's Comp. Employee Fee		
10	3000	PURCHASED SERVICES		
	3311	Trans.-Per Capita Feeders		
	3312	Transportation-Contractors		
	3313	Property/Liability Insurance		
	3314	Contract - Interagency		
	3315	Other Contract Services		
	3411	Electricity		
	3412	Bldg. Heat-Natural Gas		
	3413	Bldg. Heat-Propane/Butane		
	3414	Bldg. Heat-Other		
	3415	Water/Sewage		
	3416	Communications		
	3511	Rents & Leases		
	3611	M&R/Furn/Fixtures/Equipment		
	3612	M&R/Buildings & Grounds		
	3613	M&R/Vehicles		
	3614	M & R/Buses		
	3711	Other Charges		
10	4000	SUPPLIES & MATERIALS		
	4113	Software		
	4118	General Supplies and Materials		
	4211	Gasoline		
	4212	Diesel Fuel		
	4213	Propane/Natural Gas		

ENTITY:

PROGRAM NAME:

	EXPENDITURE CLASSIFICATION	FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)
	4214 Lubricant/Anti-freeze		
	4215 Tires/Tubes		
	4216 Maintenance Supplies/Parts		
10	5000 TRAVEL & TRAINING		
	5113 Employee Travel		
	5114 Employee Training		
	5115 Bus Driver Institute Training		
	5116 Bus Driver In-service Training		
10	6000 CAPITAL OUTLAY		
	6311 Vehicles - General		
	6312 Buses		
	6313 Heavy Equipment		
	6411 Fixed Assets ($500 and over)		
	6412 Supply Assets (under $500)		
10	SUBTOTAL TRANSPORTATION SERVICES		
11	CAPITAL OUTLAY		
	6000 CAPITAL OUTLAY		
	6111 Land		
	6112 Land Improvements		
	6211 Building Purchase		
	6212 Building Improvements		
	6311 Vehicles - General		
	6312 Buses		
	6313 Heavy Equipment		
11	SUBTOTAL CAPITAL OUTLAY		
12	NON OPERATING		
	7100 DEBT SERVICE		
	7111 Bond Principal Payment		
	7112 Bond Interest Payment		
	7500 OTHER EXPENDITURES		
	7511 Tax Liability/Penalty		
	7512 Litigation Fees		
12	SUBTOTAL NON OPERATING		
	TOTAL BUDGET		

ENTITY PROGRAM NAME: EXPENDITURE CLASSIFICATION	FINAL APPROVED BUDGET	FTE PERS. (2 DECS.)

REMINDER:

1) "Each district shall...repay to the Department of Education with nonfederal funds or from federal funds for which no accountability is required to the Federal Government, any amount determined... to have been misspent or missapplied because of the district's failure to comply with applicable statutes, regulations and requirements."

2) PURSUANT to 34 Code of Federal Regulations 76.704 and the Accounting Requirements for Flowthrough Programs, please be advised that expenditures for this program may not be incurred and will not be recognized for reimbursement if made prior to Department of Education approval.

SCHOOL DISTRICT APPROVAL:	SDE APPROVAL:
Superintendent Date	SDE Program Manager Date
Fiscal Officer Date	SDE Fiscal Officer Date

STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION
AGENCY SUPPORT DIVISION
SANTA FE, NEW MEXICO 87501-2788

RESOURCE SHEET

FISCAL YEAR ____________

REGIONAL CENTER COOPERATIVE: __________
PROGRAM NAME: __________
BUDGET PERIOD: __________
17.XXX CODE: __________

SCHOOL DISTRICT	BUDGET AMOUNT	SUPERINTENDENT'S SIGNATURE	DATE OF LOCAL BOARD ACTION

RCC TOTAL

APPROVAL:

____
RCC DIRECTOR'S SIGNATURE

____
DATE

____
SBPU DIRECTOR'S SIGNATURE

____
DATE

SDE 370-92

APPENDIX E

APPLICATION BACKGROUND NARRATIVE

1. 1992-93 IDEA-B approval status:
2. Compare IDEA-B Preschool and ESEA (SOP) Objectives and Activities for school year 1992-93 to 1993-94:
3. How is application addressing Long Range Plan(s):

PART II SECTION OF APPLICATION	IDEA-B	PRESCHOOL	ESEA
A. COVER PAGE (SDE 500A1 OR 500A2) 1. Is the appropriate information included?			
B. SPECIAL ASSURANCE (SDE 500A-3) Are special assurances included in the application?			
C. LOCAL BENEFITS FOR PRIVATE SCHOOL STUDENTS (SDE 500B) (34 CFR 76.656) Is one form for or each agency participating within a single or consolidated application?			
1. Does the application state how the applicant will meet federal requirements for participation of students enrolled in private schools?			
2. Does the application state how many students with disabilities in private schools have been identified as eligible to receive benefits under the IDEA-B projects?			
3. Does the application state how many students with disabilities are projected to receive benefits under the IDEA-B application?			
4. Does the application state what basis the LEA used to select the students to receive services?			

CONTINUED
PAGE 2

PART II SECTION OF APPLICATION	IDEA-B	PRESCHOOL	ESEA
5. Does the application include the names of the private schools consulted and the place and time that the students will receive benefits?			
6. Does the application describe the differences in IDEA-B project benefits between the public and private school students, if any, and the reasons for the differences? Does this description suggest a limited amount of service to the private school students as a group or is the statement child-need based?			
D. Use of funds (SDE 500C)			
1. If service is for IDEA, is it designated and color coded white?			
a. Does the application identify a Use of Funds for Private School Students? (cross check with SDE 500B)			
2. If service is for PRESCHOOL, is it designated and color coded green?			
3. If service is for ESEA (SOP, is it designated and color coded yellow?			
4. Is the appropriate funds source indicted? (Entitlement/Discretionary)			
5. Do the objectives specifically describe the purpose for the proposed expenditure of funds?			

CONTINUED
PAGE 3

PART II SECTION APPLICATION	IDEA-B	PRESCHOOL	ESEA
6. a. Do the activities adequately describe what the applicant proposes to undertake to accomplish the objectives?			
b. Are activities specific enough to allow accurate tracking of funds to activities?			
c. Do the proposed activities support the agency's nonsupplementing assurance (SDE 500A3#11)?			
7. Does the proposed documentation adequately provide an accurate audit trail of the proposed activities?			
8. Does the application utilize the budget component option? a. If so, are expenditures identified by function/object?			
b. If so, are expenditures identified by fund source?			
c. If so, are expenditures adequate and reasonable to support objectives and activities?			
d. If so, are sums correct?			
9. Is equipment with a unit value of more than $500 function/object 6411 itemized?			
10. Are page numbers sequential?			
11. Is 500C footer indicated?			

PART II SECTION APPLICATION	IDEA-B	PRESCHOOL	ESEA
E. Does the application include a Budget Summary (500D)?			
1. Is a separate spreadsheet prepared for each use of funds?			
2. Is each spreadsheet appropriately headed?			
3. a. Does the spreadsheet appropriately label column headings for each objective stated on 500C?			
b. Is a total column used?			
c. Are sums in total column correct?			
4. a. Does the spreadsheet appropriately label each row with a 902B-1 function/object number?			
b. Is a total row used?			
c. Are the sums in the total row correct?			
5. a. Are the expenditures stated for each of the activities adequate and reasonable to support the objectives and activities?			
b. Are the proper function/objects indicated?			
6. a. Is the figure stated in the total direct cost cell on the spreadsheet correct?			
b. Does the applicant state an indirect cost? Indirect cost found under Administration function/object (23 3713)			

CONTINUED
PAGE 5

PART II SECTION APPLICATION	IDEA-B	PRESCHOOL	ESEA
c. Is the indirect cost calculated accurately?			
d. Are function/objects 6411 subtracted from total when calculating indirect cost?			
e. Is the grand total sum correct?			
7. Are page numbers sequential?			
8. Is 500D Footer indicated?			
F. STATE DEPARTMENT OF EDUCATION BUDGET FORM (SDE 902-1) 1. Do RCC applications include a signed resource sheet for each use of funds which includes signatures of all participating agencies?			
2. Is there 1 signed 902B-1 for each Use of Funds (IDEA-B) Entitlement/IDEA-B Discretionary; Preschool and ESEA)?			
3. Do function/object totals on 500D match totals on 902B-1; for each use of funds?			
4. Are the function/object subtotals correct?			
5. Are FTEs for each 902B-1 stated and equivalent to personnel described to 500C?			
6. Is indirect cost (033713) calculated accurately?			
7. Are function/objects 6411 subtracted from total when calculating indirect cost? Note: Indirect must be calculated for each Use of Funds. See page 11 of IDEA-B application instructions and 1993-94 approved indirect cost rates.			

CONTINUED
PAGE 6

PART II SECTION APPLICATION	IDEA-B	PRESCHOOL	ESEA
8. Does the total for each Use of Funds match totals stated on 500A1 or 500A2?			
G. JOINT POWERS AGREEMENT (if applicable) 1. Is the appropriate JPA form included?			
2. Are authorized signatures of superintendents of LEAs and SSEPs attached?			
3. Has the JPA received the approval of:			
a. State Superintendent of Public Instruction?			
b. Secretary of Department of Finance and Administration?			
H. POLICY & PROCEDURES MANUAL (if applicable) Has an updated procedure manual been submitted and reviewed using a checklist?			
a. Procedure manual is approved			
b. Procedures manual is not approved and is a condition for approval of the application.			
I. The application is recommended for:			
a. Approval			
b. Approved with conditions. If so, what are the conditions?			
c. Non-approval. If so, explain			

APPENDIX F

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

Policy/procedure/assurance notation **300.###** refers to the applicable section of the Individuals with Disabilities Education Act implementing regulation (34 CFR Part 300).

Policy/procedure/assurance notation **76.###** refers to the applicable section of the Education Department General Administrative Regulations (34 CFR Part 76).

Policy/procedure/assurance notation **CM #** refers to the applicable section of the Standards for Excellence in New Mexico Schools Compliance Manual, Chapter 5, Part I - Children with Disabilities.

When the policy/procedure/assurance notation **LEA** appears, the agency manual must contain the name of the agency.

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(I) CHILD IDENTIFICATION - LEA publishes procedures which insure that all children (birth through twenty-one), including children in all public and private agencies and institutions residing within the jurisdiction of LEA with a disability, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated, including a practical method of determining which children are receiving needed special education and related services and which children are currently not receiving needed special education and related services. [300.220; CM II(A)]		
LEA CHILD FIND PROCEDURES ARE SPECIFIED		
(II) CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION - LEA publishes policies and procedures which insure that the criteria on the confidentiality of personally identifiable information are met. [300.221; CM II(B)]	Satisfied if IIA - IIL are met.	
(A) **ACCESS RIGHTS** - (1) LEA permits the parent(s) to inspect and review any educational records relating to their children which are collected, maintained, or used by LEA. LEA complies with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or delivery of services to the child, and in no case more than 45 days after the request has been made. [300.562(a); CM III-E-(A)(1)]		
(2) The right to inspect and review educational records under this section includes: (a) the right to a response from LEA to reasonable requests for explanations and interpretations of the records; [300.562(b)(1); CM III-E(A)(2)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) the right to request that LEA provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent(s) from exercising the right to inspect and review the records; and [300.562(b)(2); CM III-E(A)(2)(b)]		
(c) the right to have a representative of the parent(s) inspect and review the records. [300.562(b)(3); CM III-E(A)(2)(c)]		
(3) LEA presumes that the parent(s) has authority to inspect and review records relating to his or her child unless LEA has been advised that the parent(s) does not have the authority under applicable State law governing such matters as guardianship, custody, separation and divorce. [300.562(c); CM III-E(A)(3)]		
(B) RECORD OF ACCESS - LEA keeps a record of parties obtaining access to educational records collected, maintained or used (except access by parent(s) and authorized employees of LEA), including the name of the party, the date access was given and the purpose for which the party is authorized to use the records. [300.563; CM III-E(B)]		
(C) RECORDS ON MORE THAN ONE CHILD - If any educational record includes information on more than one child, the parent(s) of those children has the right to inspect and review only the information relating to their child or to be informed of that specific information. [300.564, CM III-E(C)]		
(D) LIST OF TYPES AND LOCATIONS OF INFORMATION - LEA provides parent(s) on request a list of the types and locations of educational records collected, maintained or used by LEA. [300.564; CM III-E(D)]		
(E) FEES - (1) LEA does not charge a fee for copies of records which are made for the parent(s) if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records. [300.566(a); CM III-E(E)(1)]		
(2) LEA does not charge a fee to search for or to retrieve information. [300.566(b); CM III-E(E)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ____________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(F) AMENDMENT OF RECORDS AT PARENT'S REQUEST - (1) A parent(s) who believes that information in educational records collected, maintained or used under is inaccurate or misleading or violates the privacy or other rights of the child, may request LEA which to amend the information. [300.567(a); CM III-E(F)(1)]		
(2) LEA decides whether to amend the information in accordance with the request within a reasonable period of time following receipt of the request. [300.567(b); CM III-E(F)(2)]		
(3) If LEA decides to refuse to amend the information in accordance with the request, it informs the parent(s) of the refusal and advise the parent(s) of the right to a hearing. [300.567(c); CM III-E(F)(3)]		
(G) OPPORTUNITY FOR A HEARING - LEA provides, on request, an opportunity for a hearing to challenge information in educational records to insure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child. [300.668; CM III-E(G)]		
(H) RESULT OF HEARING - (1) If, as a result of the hearing, LEA decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and so informs the parent(s) in writing. [300.569(a); CM III-E(H)(1)]		
(2) If, as a result of the hearing, LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it informs the parent(s) of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of LEA. [300.569(b); CM III-E(H)(2)]		
(3) Any explanation placed in the records of the child: (a) is maintained by LEA as part of the records of the child as long as the record or contested portion is maintained by LEA; and [300.569(c)(1); CM III-E(H)(3)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) if the records of the child or the contested portion(s) are disclosed by LEA to any party, the explanation also is disclosed to the party. [300.569(c)(2); CM III-E(H)(3)(b)]		
(I) **HEARING PROCEDURES** - A hearing is conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA). [300.570; CM III-E(I)]		
(J) **CONSENT** - (1) Parental consent is obtained before personally identifiable information is: (a) disclosed to anyone other than officials of public education agencies collecting or using the information, subject to item (2) of this paragraph; or [300.571(a)(1); CM III-E(J)(1)(a)]		
(b) used for any purpose other than meeting a requirement under New Mexico State Board of Education regulations. [300.571(a)(2); CM III-E(J)(1)(b)]		
(2) LEA does not release information from educational records to other public education agencies without parental consent unless authorized to do so under FERPA. [300.571(b); CM III-E(J)(2)]		
(K) **SAFEGUARDS** - (1) LEA protects the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. [300.572(a); CM III-E(K)(1)]		
(2) One official at LEA assumes responsibility for insuring the confidentiality of any personally identifiable information. [300.572(b); CM III-E(K)(2)]		
(3) All persons collecting or using personally identifiable information receive training or instruction regarding FERPA. [300.572(c); CM III-E(K)(3)]		
(4) LEA maintains, for public inspection, a current listing of the names and positions of those employees within LEA who may have access to personally identifiable information. [300.572(d); CM III-E(K)(4)]		
(L) **DESTRUCTION OF INFORMATION** - (1) LEA informs parent(s) when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the child. [300.573(a); CM III-E(L)(1)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ____________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(2) The information is destroyed at the request of the parent(s). However, a permanent record of a child's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed and year completed is maintained without time limitation. [300.573(b); CM III-E(L)(2)]		
(3) The personally identifiable information on a child with a disability may be retained permanently unless the parent(s) requests that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing the parent(s) about rights under these rules, LEA reminds the parent(s) that the records may be needed by the child or the parent(s) for social security benefits or other purposes. If the parent(s) requests that the information be destroyed, LEA may retain the information in paragraph (2). [CM III-E(L)(3)]		
LEA RECORD DESTRUCTION PROCEDURES ARE SPECIFIED		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(III) EXTENDED SCHOOL YEAR - LEA makes extended school year service(s) available to those children with disabilities who meet eligibility criteria. The purpose of an extended school year is to prevent or slow severe skill regression caused by an interruption of special education service(s) during extended periods when school is not in session. The purpose is not to enhance the present levels of educational performance exhibited by children with disabilities at the end of the regular school year. The need for extended school year service(s) is based on a construct of skill regression and a child's limited capacity for recoupment. An extended school year may be provided only when it is determined that a child might regress to such an extent in a critical skill area that recoupment of such skill loss would require an unusually long period of time or make it unlikely or impossible to recoup the present level of educational performance. When it is determined by a multidisciplinary team that a child is in need of extended school year service, the service is proposed at no cost to the parent(s). Extended school year service is provided only under the auspices of an Individualized Education Program (IEP). Eligibility for extended school year service is determined on an individual-by-individual basis. Extended school year guidelines and practices are not invoked which have an effect of considering children with disabilities as an exceptional class. [CM II-(C)]		
LEA EXTENDED SCHOOL YEAR PROCEDURES ARE SPECIFIED		
(IV) FULL EDUCATIONAL OPPORTUNITY GOAL-- TIMETABLE - LEA has established: (1) a goal of providing full educational opportunity to all children with disabilities birth through age twenty-one (21) and [300.222(a); 300.304; CM II(D)(1); CM IV-A(D)]		
(2) a detailed timetable for accomplishing the goal. The goals and objectives related to this goal are identified annually in the LEA Individuals with Disabilities Education Act (IDEA) local application made to the New Mexico State Department of Education (NMSDE). [300.222(b); CM II(D)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(V) FACILITIES, PERSONNEL AND SERVICES - LEA provides a description of the kind and number of facilities, personnel and services necessary to meet the Full Educational Opportunity Goal required in IV. LEA meets this requirement by annually reporting on the NMSDE Student Census Report. [300.223; CM II(E)]		
(VI) PERSONNEL DEVELOPMENT - LEA publishes procedures for the implementation and use of the Comprehensive System of Personnel Development established by the NMSDE in its IDEA State Plan. The goals and objectives related to this policy are identified annually in the LEA IDEA local application made to the NMSDE. [300.224; CM II(F)]		
(VII) PARENT INVOLVEMENT - LEA publishes procedures to insure that, in meeting the Full Educational Opportunity Goal required in IV, LEA makes provision for participation and consultation with parents or guardians of children with disabilities. [300.226; CM II(G)]		
LEA PROCEDURES FOR PARENT PARTICIPATION AND CONSULTATION IN THE DEVELOPMENT OF THE IDEA LOCAL APPLICATION ARE SPECIFIED		
(VIII) PARTICIPATION IN GENERAL EDUCATION - LEA publishes procedures to insure that to the maximum extent appropriate and consistent with the Least Restrictive Environment requirements that LEA provides special education services to enable children with disabilities to participate in general educational programs. [300.227(a); CM II(H)]	Satisfied if VIIIA - VIIID are met.	
LEA describes: (1) the types of alternative placements that are available for children with disabilities; and [300.227(b)(1); CM II(H)(1)]		
(2) the number of children with disabilities within each category of disability who are served in each type of delivery of services model. LEA meets this requirement by annually reporting on the NMSDE Student Census Report. Additionally, LEA assures the following: [300.227(b)(2); CM II(H)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(A) GENERAL - (1) LEA has established and implemented procedures which meet the requirements of Least Restrictive Environment. (2) LEA insures: (a) that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children without disabilities; and [300.550(b)(1); CM III-D(A)(1)(2)(a)]		
(b) that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. [300.550(b)(2); CM III-D(A)(2)(b)]		
(B) CONTINUUM OF ALTERNATIVE SERVICE DELIVERY MODELS - (1) LEA insures that a continuum of alternative service delivery models is available to meet the needs of children with disabilities for special education and related services. [300.551(a); CM III-D(B)(1)]		
(2) The continuum required under paragraph (B)(1): (a) includes alternative service delivery models; and [300.551(b)(1); CM III-D(B)(2)(a)]		
(b) makes provision for supplementary aids and services to be provided in conjunction with general classes. [300.551(b)(2); CM III-D(B)(2)(b)]		
(C) SERVICE DELIVERY MODELS - LEA insures that: (1) each child's educational service delivery model: (a) is determined at least annually, [300.552(a)(1); CM III-D(C)(1)(a)]		
(b) is based on his or her IEP; and [300.552(a)(2); CM III-D(C)(1)(b)]		
(c) is as close as possible to the child's home; [300.552(a)(3); CM III-D(C)(1)(c)]		
(2) these various alternative service delivery models are available to the extent necessary to implement the IEP for each child with a disability; [300.552(b); CM III-D(C)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(3) unless the IEP requires some other arrangement, the child is educated in the school which he or she would attend if he or she did not have a disability; [300.552(c); CM III-D(C)(3)]		
(4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; [300.552(d); CM III-D(C)(4)]		
(5) delivery of services decisions are made on an individual basis; [CM III-D(C)(5)]		
(6) LEA has various alternative service delivery models available in order to insure that each child with a disability receives an education which is appropriate to his or her individual needs; [CM III-D(C)(6)]		
(7) each child's delivery of services model is in the least restrictive environment in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of XII; and [CM III-D(C)(7)]		
(8) delivery of services requirements apply to all preschool children with disabilities who are entitled to receive a free appropriate public education. If LEA provides preschool programs for children without disabilities, LEA ensures that the least restrictive environment requirements are met. If LEA does not operate programs for preschool children without disabilities, LEA is not required to initiate such programs solely to satisfy the requirements regarding delivery of services in the least restrictive environment. If LEA does not operate programs for preschool children without disabilities, some alternative methods for meeting the delivery of services requirements, include: (a) providing opportunities for the participation of preschool children with disabilities in other preschool programs operated by public agencies; (b) placing children with disabilities in private school programs for preschool children without disabilities or private school preschool programs that integrate children with disabilities with children without disabilities; and (c) locating classes for preschool children with disabilities in elementary schools. [CM III-D(C)(8)(a)(b)(c)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ____________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(D) NONACADEMIC SETTINGS - (1) In providing or arranging for the provision of nonacademic and extra-curricular services and activities, including meals, recess periods and the services and activities set forth in VIII, LEA insures that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to meet the needs of that child. [300.553; CM III-D(D)(1)]		
(2) Children with disabilities are also provided nonacademic services in as integrated a setting as possible. To the maximum extent appropriate, children in residential settings are also provided opportunities for participation with children without disabilities. [CM III-D(D)(2)]		
(IX) EXCESS COST - LEA provides assurance satisfactory to the NMSDE that LEA uses funds provided under IDEA only for costs which exceed state and local revenue and which are directly attributable to the education of children with disabilities. LEA annually files an excess cost calculation which is available for review. [300.229; CM II(I)]		
(X) NONSUPPLANTING - LEA provides assurance satisfactory to the NMSDE that LEA uses funds provided under IDEA to supplement and, to the extent practicable, increase the level of state and local funds expended for the education of children with disabilities, and in no case to supplant those state and local funds. To meet the requirement in the proceeding statement: [300.230(a); CM II(J)]		
(1) the total amount or average per capita amount of state and local funds budgeted by LEA for expenditures in the current fiscal year for the education of children with disabilities is at least equal to the total amount or average per capita amount of state and local school funds actually expended for the education of children with disabilities in the most recent proceeding fiscal year for which the information is available. Allowance may be made for: [300.230(b); CM II(J)(1)]		
(a) decreases in enrollment of children with disabilities; and [300.230(b)(1); CM II(J)(1)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and [300.230(b)(2); CM II(J)(1)(b)]		
(2) LEA does not use IDEA funds to displace state and local funds for any particular cost. [CM II(J)(2)]		
(3) The intent of this requirement is to insure that IDEA funds are used to increase state and local efforts and are not used to take their place. Compliance with this requirement is judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to children with disabilities. LEA annually files a maintenance of effort calculation which is available for review. [300.230; CM II(J)(3)]		
(XI) **COMPARABLE SERVICES** - (1) LEA provides assurance satisfactory to the NMSDE that LEA meets the requirements of Comparable Services stated herein; [300.231(a); CM II(K)(1)]		
(2) LEA uses funds under IDEA to provide services to children with disabilities unless LEA uses state and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other children with disabilities in the LEA; and [300.231(b); CM II(K)(2)]		
(3) LEA maintains records which show that LEA meets the requirement in statement (2) of this paragraph. [300.231(c); CM II(K)(3)]		
(XII) **INDIVIDUALIZED EDUCATION PROGRAM** - LEA publishes procedures to assure that LEA complies with Individualized Education Program (IEP) requirements. [300.341; CM II(L)]	Satisfied if XIIA - XIIK are met.	
(A) **DEFINITION** - As used in these rules, an IEP means a written statement for a child with a disability that is developed and implemented according to the following requirements. [300.341; CM IV-B(A)]		
(B) **RESPONSIBILITY** - (1) Public agencies. LEA develops and implements an IEP for each child in need of special education within its jurisdiction. [300.341(a); CM IV-B(B)(1)]		

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(2) Private schools and facilities. LEA insures that an IEP is developed and implemented for each child in need of special education who is: (a) placed in or referred to a private school by LEA; or [300.341(b)(1); CM IV-B(B)(2)(a)]		
(b) enrolled in a parochial or other private school and receives special education or related services from LEA. [300.341(b)(2); CM IV-B(B)(2)(b)]		
(C) WHEN IEPs MUST BE IN EFFECT - An IEP is: (1) in effect before special education and related services are provided to a child; [300.342(b)(1); CM IV-B(C)(1)]		
(2) implemented as soon as possible following the IEP meetings; and [300.342(b)(2); CM IV-B(C)(2)]		
(3) implemented immediately following the meeting except: (a) when the meetings occur during the summer or a vacation period; or (b) where there are circumstances which require a short delay. There can be no undue delay in providing special education and related services to the child. [CM IV-B(C)(3)]		
(D) MEETINGS - (1) LEA is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising a child's IEP. [300.343(a); CM IV-B(D)(1)]		
(2) Review. LEA initiates and conducts meetings to periodically review each child's IEP and if appropriate revise its provisions. A meeting is held for this purpose at least once a year. The timing of meetings to develop, review and revise IEPs is left to the discretion of LEA and meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year. The timing of those meetings also may be on the anniversary date of the child's last IEP meeting. [300.343(d); CM IV-B(D)(2)]		
(E) PARTICIPANTS IN IEP MEETINGS - (1) General. LEA insures that each IEP meeting includes the following participants: [300.344(a); CM IV-B(E)(1)]		
(a) a representative of LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education; [300.344(a)(1); CM IV-B(E)(1)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) the child's teacher(s); [300.344(a)(2); CM IV-B(E)(1)(b)]		
(c) one or both of the child's parents; [300.344(a)(3); CM IV-B(E)(1)(c)]		
(d) the child, where appropriate; and [300.344(a)(4); CM IV-B(E)(1)(d)]		
(e) other individuals at the discretion of the parent(s) or LEA; [300.344(a)(5); CM IV-B(E)(1)(e)]		
(2) Evaluation personnel. For a child with a disability who has been evaluated for the first time, LEA insures: (a) that a member of the evaluation team participates in the meeting; or [300.344(b)(1); CM IV-B(E)(2)(a)]		
(b) that the representative of LEA, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation. [300.344(b)(2); CM IV-B(E)(2)(b)]		
(3) Transition services personnel - For students with disabilities aged 16 years and older, and for students below age 16 whose need for transition services is being considered, LEA ensures that any meeting to develop, review or revise the student's IEP includes: (a) a representative of LEA responsible for providing or supervising the provision of transition services; and [300.344(c); CM IV-B(E)(3)(a)]		
(b) if appropriate, a representative of other participating agencies providing transition services included in the student's IEP; [300.344(c)(1)(ii); CM IV-B(E)(3)(b)]		
(c) if appropriate, LEA includes the student at an IEP meeting to ensure that the transition services component of the student's IEP addresses the student's needs, preferences and interests; and [300.344(c)(1)(i); CM IV-B(E)(3)(c)]		
(d) if the student does not attend, LEA takes other steps to ensure that the student's preferences and interests are considered. [300.344(c)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(F) PARENT PARTICIPATION - (1) LEA insures that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including: [300.345; CM IV-B(F)(1)]		
(a) providing written notice of the IEP meeting to the parent(s) early enough to insure that they have an opportunity to attend; and [300.345(a)(1); CM IV-B(F)(1)(a)]		
(b) scheduling the meeting at a mutually agreed on time and place. [300.345(a)(2); CM IV-B(F)(1)(b)]		
(2) The written notice indicates the purpose, time and location of the meeting, and who will be in attendance. [300.345(b)(1); CM IV-B(F)(2)]		
(3) The notice also informs the parent(s) that they may bring other people to the meeting. If neither parent can attend, LEA uses other methods to insure parent participation, including individual or conference telephone calls. [CM IV-B(F)(3)]		
(4) A meeting may be conducted without a parent(s) in attendance if LEA is unable to convince the parent(s) that they should attend. In this case, LEA maintains a record of its attempts to arrange a mutually agreed upon time and place such as: (a) detailed records of telephone calls made or attempted and the results of those calls. (b) copies of correspondence sent to the parent(s) and any responses received; and (c) detailed records of visits made to the parent's home or place of employment and the results of those visits. [300.345(d); CM IV-B(F)(4)]		
(5) LEA insures that the parent(s) understands the proceedings at a meeting by arranging for an interpreter for a parent(s) who are deaf or whose native language is other than English. [300.345(e); CM IV-B(F)(5)]		
(6) LEA gives the parent(s) a copy of the IEP. [300.345(f); CM IV-B(F)(6)]		
(7) If a purpose of the meeting is the consideration of transition services for a student, the notice also (a) indicates this purpose, [300.345(b)(2)(i)]		
(b) indicates that LEA will invite the student and [300.345(b)(2)(ii)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(c) identifies any other agency that will be invited to send a representative. [300.345(b)(2)(iii)]		
(G) CONTENT OF IEP - The IEP for each child includes: (1) a statement of the child's present levels of educational performance which accurately describes the effect of the child's disability on the child's performance in any area that is affected and is written in objective measurable terms; [300.346(a)(1); CM IV-B(G)(1)]		
(2) a statement of annual goal(s), including measurable short-term instructional objectives; [300.346(a)(2); CM IV-B(G)(2)]		
(3) a statement of the specific special education and related service(s) to be provided to the child and [300.346(a)(3); CM IV-B(G)(3)]		
the extent to which the child will participate in general education programs. [300.346(a)(3); CM IV-B(G)(3)]		
The amount of service(s) to be provided is stated and [CM IV-B(G)(3)]		
the amount of time to be committed to each service is stated; [CM IV-B(G)(3)]		
(4) a description of modifications to the child's general education program, if modifications are necessary to ensure the child's participation in that program; [CM IV-B(G)(4)]		
(5) the projected date(s) for initiation of service(s) and [300.346(a)(4); CM IV-B(G)(5)]		
the anticipated duration of the service(s); [300.346(a)(4); CM IV-B(G)(5)]		
(6) appropriate objective criteria and evaluation procedure(s) and schedule(s) for determining, on at least an annual basis, whether the annual goal(s) and measurable short-term instructional objectives are being achieved; [300.346(a)(5); CM IV-B(G)(6)]		
(7) a statement of the needed transition services for a child, beginning no later than age 16, annually thereafter, and, when appropriate for the child, beginning at age 14 or younger, [300.346(b); CM IV-B(G)(7)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
including, when appropriate, a statement of the interagency responsibilities and/or linkages before the child leaves the school setting; and [300.346(b); CM IV-B(G)(7)]		
(8) the signature and position of each participant present during the development of the IEP. [CM IV-B(G)(8)]		
The IEP is developed prior to initial delivery of services and the initiation of special education and related service(s). [CM IV-B(G)(9)]		
The LEA provides the parent(s) a copy of the individual's IEP at no cost. [300.345(f); CM IV-B(G)(10)]		
(H) AGENCY RESPONSIBILITIES FOR TRANSITION SERVICES - (1) If a public agency, other than LEA, fails to provide agreed upon transition services contained in the IEP of a student with a disability, LEA reconvenes a meeting of all of the participants in the IEP meeting to identify alternative strategies to be implemented to meet the transition objectives that were included in that student's IEP. [300.347(a); CM IV-B(H)(1)]		
(2) If the IEP team determines that services are not needed in one or more of the areas identified as transition services, the IEP includes a statement to that effect and the basis upon which the determination was made. [300.346(b)(2)]		
(I) PRIVATE SCHOOL OR STATE SUPPORTED EDUCATIONAL PROGRAM PLACEMENTS - (1) Developing the IEP. Before LEA places a child with a disability in, or refers a child to, a private school or state supported educational program, LEA initiates and conducts a meeting to develop an IEP for the child. LEA insures that a representative of the private school or state supported educational program attends the meeting. If the representative cannot attend, LEA uses other methods to insure participation by the private school or state supported educational program, including individual or conference telephone calls. [300.348(a)(1)(2); CM IV-B(I)(1)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(2) Reviewing and revising the IEP. (a) After a child with a disability enters a private school or state supported educational program, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or state supported educational program at the discretion of LEA. [300.348(b); CM IV-B(I)(2)(a)]		
(b) If the private school or state supported educational program or initiates and conducts these meetings, LEA insures that the parent(s) and an LEA representative: (i) are involved in any decision about the child's IEP; and [300.348(b)(2)(i); CM IV-B(I)(2)(b)(i)]		
(ii) agree to any proposed changes in the IEP before those changes are implemented. [300.348(b)(2)(ii); CM IV-B(I)(2)(b)(ii)]		
(3) Responsibility. Even if a private school or state supported educational program implements a child's IEP, responsibility for compliance with these rules remains with LEA. [300.348(c); CM IV-B(I)(3)]		
(J) CHILDREN WITH DISABILITIES IN PAROCHIAL OR OTHER PRIVATE SCHOOLS - If a child with a disability is enrolled in a parochial or other private school and receives special education or related services from LEA, LEA: (1) initiates and conducts meetings to develop, review and revise an IEP for the child; and [300.349(a); CM IV-B(J)(1)]		
(2) insures that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, LEA uses other methods to insure participation by the private school, including individual or conference telephone calls. [300.349(b); CM IV-B(J)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(K) IEP ACCOUNTABILITY - LEA provides special education and related services to a child with a disability in accordance with an IEP. This does not require that LEA, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goal(s) and objectives. An IEP does not constitute a guarantee by LEA and the teacher that a child will progress at a specified rate. LEA and teachers are not relieved from making good faith efforts to assist the child in achieving the goal(s) and objectives listed in the IEP. The parent(s) have a right to complain about and ask for revisions of the child's IEP or to invoke due process procedures if the parent(s) feels that a good faith effort is not being made by LEA or teachers. [300.350; CM IV-B(K)]		
(XIII) DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN - LEA publishes procedural safeguards addressing due process procedures for the parent(s) and children which meet the requirements identified in the following section. **(A) GENERAL RESPONSIBILITY OF LEA** - LEA establishes, implements and publishes written procedural safeguards which meet the requirements set forth below. [300.237; 300.501; CM II(M); CM III-A(A)]	Satisfied if XIIIB - XIIIO are met.	
(B) PRIOR NOTICE; PARENT CONSENT - (1) Notice. Written notice which meets the requirements of XIII (C) is given to the parent(s) of a child with a disability a reasonable time before LEA: [300.504(a); CM III-A(B)(1)]		
(a) proposes to initiate or change the identification, evaluation or delivery of educational services to the child or the provision of a free appropriate public education to the child or [300.504(a)(1); CM III-A(B)(1)(a)]		
(b) refuses to initiate or change the identification, evaluation or delivery of educational services to the child or the provision of a free appropriate public education to the child. [300.504(a)(2); CM III-A(B)(1)(b)]		
(2) Consent. (a) parental consent is obtained before: (i) conducting an initial evaluation; and [300.504(b)(1)(i); CM III-A(B)(2)(a)(i)]		
(ii) initial delivery of services to a child with a disability in a program providing special education and related services. [300.504(b)(1)(ii); CM III-A(B)(2)(a)(ii)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) except for initial evaluation and initial delivery of services, consent is not required as a condition of any benefit to the parent(s) or child. [300.504(d); CM III-A(B)(2)(b)]		
(3) Procedures Where Parent Refuses Consent. (a) Where a parent(s) refuses consent to identify, evaluate or provide services to a child with a disability, LEA uses the impartial due process hearing procedures specified in XIII(H) to determine if the child may be evaluated or initially provided special education and related services without parental consent. [300.504(b)(3); CM III-A(B)(3)(a)]		
(b) If the hearing officer upholds LEA, LEA may evaluate or initially provide special education and related services to the child without the parent's consent subject to the parent rights specified in XIII(H-O). [300.504(b)(3); CM III-A(B)(3)(b)]		
(C) CONTENT OF NOTICE - (1) The notice under XIII(B) includes: (a) a full explanation of the procedural safeguards available to the parent(s) under II, VIII, XII, XIII and XIV; [300.505(a)(1); CM III-A(C)(1)(a)]		
(b) a description of the action proposed or refused by LEA, [300.505(a)(2); CM III-A(C)(1)(b)]		
an explanation of why LEA proposes or refuses to take the action and [300.505(a)(2); CM III-A(C)(1)(b)]		
a description of any options LEA considered and [300.505(a)(2); CM III-A(C)(1)(b)]		
the reasons why those options were rejected; [300.505(a)(2); CM III-A(C)(1)(b)]		
(c) a description of each evaluation procedure, test, record or report LEA uses as a basis for the proposal or refusal and [300.505(a)(3); CM III-A(C)(1)(c)]		
(d) a description of any other factors which are relevant to the proposal or refusal. [300.505(a)(4); CM III-A(C)(1)(d)]		
(2) The notice is: (a) written in language understandable to the general public and [300.505(b)(1); CM III-A(C)(2)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ____________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so. [300.505(b)(2); CM III-A(C)(2)(b)]		
(3) If the native language or other mode of communication of the parent(s) is not a written language, LEA insures: (a) that the notice is translated orally or by other means to the parent(s) in his or her native language or other mode of communication; [300.505(c)(1); CM III-A(C)(3)(a)]		
(b) that the parent(s) understands the content of the notice; and [300.505(c)(2); CM III-A(C)(3)(b)]		
(c) that there is written documentation that the requirements in this paragraph have been met. [300.505(c)(3); CM III-A(C)(3)(c)]		
(D) OPPORTUNITY TO EXAMINE RECORDS - The parent(s) of a child with a disability are afforded an opportunity to inspect and review all education records with respect to: (1) the identification, evaluation and delivery of educational services to the child; and [300.502(a); CM III-A(D)(1)]		
(2) the provision of a free appropriate public education to the child. [300.502(b); CM III-A(D)(2)]		
(E) INDEPENDENT EDUCATIONAL EVALUATION - (1) General. (a) The parent(s) of a child with a disability have the right to obtain an independent educational evaluation of the child subject to (2) through (5) of this paragraph. [300.503(a)(1); CM III-A(E)(1)(a)]		
(b) LEA provides to the parent(s), on request, information about where an independent educational evaluation may be obtained. [300.503(a)(2); CM III-A(E)(1)(b)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(2) Parent Right to Evaluation at Public Expense. A parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation obtained by LEA. However, LEA may initiate a hearing to demonstrate that its evaluation is appropriate. If through a hearing the final decision is that the LEA evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense. [300.503(b); CM III-A(E)(2)]		
(3) Parent Initiated Evaluations. If the parent(s) obtains an independent educational evaluation at private expense, the results of the evaluation: (a) are considered by LEA in any decision(s) made with respect to the provision of a free appropriate public education to the child; and [300.503(c)(1); CM III-A(E)(3)(a)]		
(b) may be presented as evidence at a hearing under XIII regarding that child. [300.503(c)(2); CM III-A(E)(3)(b)]		
(4) Requests for Evaluations by Hearing Officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation is at public expense. [300.503(d); CM III-A(E)(4)]		
(5) Agency Criteria. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner(s), are the same as the criteria which LEA uses when it initiates an evaluation. [300.503(e); CM III-A(E)(5)]		
(F) MEDIATION - Although the process of mediation is not required, LEA suggests mediation in disputes concerning the identification, evaluation and delivery of educational services to children with disabilities, and the provision of a free appropriate public education to those children. Mediation may be conducted by trained mediators or LEA personnel not previously involved in the particular case. In many cases, mediation leads to resolution of differences between the parent(s) and LEA without the development of an adversarial relationship and with minimal emotional stress. However, mediation is not used to deny or delay a parent's rights under XIII. [CM III-A(F)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(G) COMPLAINT - (1) Individuals and organizations have the right to file a complaint alleging the failure of the New Mexico State Department of Education (NMSDE) or the LEA to comply with statutes or regulations applicable to education programs subject to the Education Department General Administrative Regulations (EDGAR), (34 CFR Part 74 through 79) [76.780 - 76.783; CM III-A(G)]		
The complaint must be addressed to either the Superintendent of Public Instruction or the United States Department of Education. [76.780 - 76.783; CM III-A(G)]		
(2) The complaint must: (a) be written; [CM III-A(G)(2)(a)]		
(b) be signed by the complaining party or his or her designated representative; [CM III-A(G)(2)(b)]		
(c) contain a statement that the NMSDE or the LEA has violated a requirement of a statute or regulation that applies to a program; [CM III-A(G)(2)(c)]		
(d) contain a statement of the facts forming the basis of the complaint; and [CM III-A(G)(2)(d)]		
(e) contain a statement that the matter(s) complained of has been brought to the attention of the LEA and has not been resolved to the satisfaction of the complainant. [CM III-A(G)(2)(e)]		
(H) IMPARTIAL DUE PROCESS HEARING - (1) A parent(s) or the LEA may initiate a hearing on any of the matters described in XIII(B) of these rules. [300.506(a); CM III-A(H)(1)]		
(2) The hearing must be conducted in accordance with the procedures established in XIII(I). [300.506(b); CM III-A(H)(2)]		
(3) LEA informs the parent(s) of any free or low-cost legal and other relevant services available in the area if: (a) the parent(s) requests the information; or (b) the parent(s) or the LEA initiates a hearing under XIII. [300.506(c); CM III-A(H)(3)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(I) IMPARTIAL DUE PROCESS HEARING PROCEDURES - (1) A parent(s) or guardian(s) initiating an impartial due process hearing shall hand-deliver or mail by certified mail a written request to the LEA superintendent and to the State Superintendent of Public Instruction. When LEA initiates an impartial due process hearing, it shall hand-deliver or mail by certified mail a written request to the parent(s) or guardian(s) and to the State Superintendent of Public Instruction. The reason(s) for the request shall be specifically stated. [CM III-A(I)(1)]		
(2) Pursuant to timelines and convenience of hearings, the NMSDE insures that: (a) within ten (10) calendar days of receipt of request for an impartial due process hearing the parties involved shall be encouraged to conduct a mediation conference; [CM III-A(I)(2)(a)]		
(b) within ten (10) calendar days of receipt of a request for an impartial due process hearing individual records shall be exchanged by the parties involved in a manner consistent with II; [CM III-A(I)(2)(b)]		
(c) within fifteen (15) calendar days of receipt of request for an impartial due process hearing, the NMSDE shall mail by certified mail to the parties three randomly selected names of Impartial Hearing Officers; [CM III-A(I)(2)(c)]		
(d) within five calendar days of receipt of names of the three randomly selected Impartial Hearing Officers, the parties shall mutually select one Impartial Hearing Officer and both parties shall notify the State Superintendent of Public Instruction by certified mail. [CM III-A(I)(2)(d)]		
(e) Specific impartial due process hearing rights shall be afforded to any party to a hearing pursuant to XIII(K). [CM III-A(I)(2)(e)]		
(3) The Impartial Hearing Officer shall have the authority to: (a) insure the hearing rights of the parties pursuant to XIII(K); [CM III-A(I)(3)(a)]		
(b) request, as appropriate, an independent educational evaluation of the child at public expense pursuant to XIII(E)(4); [CM III-A(I)(3)(b)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(c) require the parties to submit written arguments or briefs on the issues raised in the hearing; and [CM III-A(I)(3)(c)]		
(d) grant specific extensions of time beyond the periods set out in XIII(I), at the request of either party. The New Mexico Rules of Evidence shall not apply to Impartial Due Process Hearings. [CM III-A(I)(3)(d)]		
(4) The Impartial Due Process Hearing shall be electronically recorded and a verbatim printed transcript shall be provided to the Impartial Hearing Officer and parent(s) within five (5) calendar days of completion of the Impartial Due Process Hearing. LEA is responsible for the recording, printed transcript and the costs incurred therein. [CM III-A(I)(4)]		
(5) The Impartial Hearing Officer, pursuant to XIII(P), shall prepare a final written decision and mail by certified mail a copy of the decision to the parent(s), the LEA and the State Superintendent of Public Instruction. [300.512(b)(2); CM III-A(I)(5)]		
(J) IMPARTIAL HEARING OFFICER - (1) A hearing may not be conducted: (a) by a person who is an employee of the LEA; or [300.507(a)(1); CM III-A(J)(1)(a)]		
(b) by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. [300.507(a)(2); CM III-A(J)(1)(b)]		
(2) A person who otherwise qualifies to conduct a hearing under item (1) of this paragraph is not an employee of LEA solely because s/he is paid by LEA to serve as a hearing officer. [300.507(b); CM III-A(J)(2)]		
(3) The NMSDE shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. [300.507(c); CM III-A(J)(3)]		
(K) HEARING RIGHTS - (1) Any party to a hearing has the right to: (a) be accompanied and advised by counsel and by an individual with special knowledge or training with respect to the needs of children with disabilities; [300.508(a)(1); CM III-A(K)(1)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) present evidence and confront, cross-examine and compel the attendance of witnesses; [300.508(a)(2); CM III-A(K)(1)(b)]		
(c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing; [300.508(a)(3); CM III-A(K)(1)(c)]		
(d) obtain a written or electronic verbatim record of the hearing; and [300.508(a)(4); CM III-A(K)(1)(d)]		
(e) obtain written findings of facts and decisions. The NMSDE shall share those findings and decisions, after deleting any personally identifiable information, with the State IDEA Advisory Panel. [300.508(a)(5)(i); CM III-A(K)(1)(e)]		
(2) A parent(s) involved in hearings must be given the right to: (a) have the child who is the subject of the hearing present; and [300.508(b)(1); CM III-A(K)(2)(a)]		
(b) open the hearing to the public. [300.508(b)(2); CM III-A(K)(2)(b)]		
(L) HEARING DECISION; APPEAL - A decision rendered in an impartial due process under XIII is final, unless a party to the hearing appeals the decision to the NMSDE. [300.509; CM III-A(L)]		
(M) CIVIL ACTION - Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under paragraph XIII(H) and any party aggrieved by the decision of an Administrative Appeal Officer under XIII(L) has the right to bring a civil action. [300.511; CM III-A(O)]		
(N) CHILD'S STATUS DURING PROCEEDINGS - (1) During the pendency of any administrative or judicial proceeding regarding a hearing, unless the LEA and the parent(s) of the child agree otherwise, the child involved in the hearing must have his or her present delivery of services continued. [300.513(a); CM III-A(Q)(1)]		
(2) If the hearing involves an application for initial admission to public school, the child with the consent of the parent(s) must be placed in the public school program until the completion of all the proceedings. [300.513(b); CM III-A(Q)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(3) This paragraph does not permit a child's delivery of services to be changed during a hearing proceeding, unless the parent(s) and LEA agree otherwise. While the delivery of services may not be changed, this does not preclude the LEA from using its normal procedures for dealing with children who are endangering themselves or others. [CM III-A(Q)(3)]		
(O) SURROGATE PARENTS - (1) General. LEA insures that the rights of a child are protected when: (a) no parent(s) can be identified; [300.514(a)(1); CM III-A(R)(1)(a)]		
(b) LEA, after reasonable and documented efforts, cannot discover the whereabouts of a parent(s); or [300.514(a)(2); CM III-A(R)(1)(b)]		
(c) the child is a ward of the State under the laws of New Mexico. [300.514(a)(3); CM III-A(R)(1)(c)]		
(2) Duty of LEA. The duty of LEA under item: (1) of this paragraph includes the assignment of an individual to act as a surrogate for the parent(s). [300.514(b); CM III-A(R)(2)]		
This must include a method (a) for determining whether a child needs a surrogate parent; and [300.514(b)(1); CM III-A(R)(2)(a)]		
(b) for assigning a surrogate parent to the child. [300.514(b)(2); CM III-A(R)(2)(b)]		
(3) Criteria for Selection of Surrogates. (a) The LEA selects a surrogate parent in any way permitted under New Mexico law and New Mexico State Board of Education regulation. [300.514(c)(1); CM III-A(R)(3)(a)]		
(b) LEA insures that a person selected as a surrogate: (i) has no interest that conflicts with the interest of the child s/he represents; and [300.514(c)(2)(i); CM III-A(R)(3)(b)(i)]		
(ii) has knowledge and skills, that insure adequate representation of the child. [300.514(c)(2)(ii); CM III-A(R)(3)(b)(ii)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(4) Non-Employee Requirement; Compensation. (a) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child. [300.514(d)(1); CM III-A(R)(4)(a)]		
(b) A person who otherwise qualifies to be a surrogate under item (3) and (4)(a) of this paragraph, is not an employee of LEA solely because s/he is paid by the LEA to serve as surrogate parent. [300.514(d)(2); CM III-A(R)(4)(b)]		
(5) Responsibilities. The surrogate parent may represent the child in all matters relating to: (a) the identification, evaluation and delivery of educational services to the child; and [300.514(e)(1); CM III-A(R)(5)(a)]		
(b) the provision of a free appropriate public education to the child. [300.514(e)(2); CM III-A(R)(5)(b)]		
LEA SURROGATE PARENT PROCEDURES ARE SPECIFIED INCLUDING A TRACKING MECHANISM		
(XIV) **PROTECTION IN THE EVALUATION AND DELIVERY OF SERVICES PROCESS** - LEA publishes procedural safeguards addressing protection in the evaluation and delivery of services procedures which meet the requirements identified in the following section. [300.530(a); CM II(P)]	Satisfied if XIVA - XIVE are met.	
(A) REFERRAL FOR MULTIDISCIPLINARY EVALUATION - Whether from general screening or from direct referrals, LEA maintains a record of the receipt, processing and disposition of referrals for multidisciplinary evaluation. [CM III-B(A)]		
Prior to referral for multidisciplinary evaluation LEA documents the implementation of prereferral intervention strategies. [CM III-B(A)]		
(B) INITIAL MULTIDISCIPLINARY EVALUATION - Before any action is taken with respect to the initial delivery of services of a child with a disability, a full and individual multidisciplinary evaluation of the child's educational needs is conducted at no cost to the parent(s). [300.531(a); CM III-B(B)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(C) EVALUATION PROCEDURES - (1) Testing and evaluation materials and procedures used for the purposes of evaluation and delivery of services to children with disabilities are selected and administered so as not to be racially or culturally discriminatory. [300.530(b); CM III-B(C)(1)]		
At a minimum, tests and other evaluation materials: (a) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; [300.532(a)(1); CM III-B(C)(1)(a)]		
(b) have been validated for the specific purpose for which they are used; and [300.532(a)(2); CM III-B(C)(1)(b)]		
(c) are administered by trained personnel, such as a school psychologist, educational diagnostician, speech-language pathologist, classroom teacher, program specialist or remedial reading teacher, in conformance with the instructions provided by their producers. [300.532(a)(3); CM III-B(C)(1)(c)]		
(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient. [300.532(b); CM III-B(C)(2)]		
(3) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills (except where those skills are the factors which the test purpose is to measure). [300.532(c); CM III-B(C)(3)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(4) No single procedure is used as the sole criterion for determining an appropriate educational program for a child. Additional factors influence the choice of a specific evaluation procedure, including the child's age, severity and nature of disability, progress in school and availability of data from many sources (e.g., school and home). Sources of information that are considered in an evaluation include, but are not limited to, review of records, interviews, observations, curriculum-based measures, rating scales and psychoeducational tests. Some areas of evaluation may require procedures from several of these data sources. [300.532(d); CM III-B(C)(4)]		
(5) The evaluation is made by a multidisciplinary team or group of persons, including family members, at least one teacher and a qualified specialist in the area(s) of suspected disability. [300.532(e); CM III-B(C)(5)]		
(6) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. [300.532(f); CM III-B(C)(6)]		
(7) Children who have a speech-language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). [CM III-B(C)(7)]		
However, a qualified speech-language pathologist: (a) evaluates each child with a speech-language impairment using procedures that are appropriate for the assessment and evaluation of children with a speech-language impairment; and [CM III-B(C)(7)(a)]		
(b) where necessary, makes referrals for additional assessments needed to make an appropriate delivery of services decision. [CM III-B(C)(7)(b)]		
(8) An observation process is included within the evaluation procedures as follows: (a) At least one team member other than the child's regular teacher observes the child's academic performance in the regular classroom setting. [CM III-B(C)(8)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) In the case of a child of less than school age or out of school, a team member observes the child in an environment appropriate for a child of that age. [CM III-B(C)(8)(b)]		
(9) All appropriate evaluation data, inclusive of summary reports from all individuals evaluating the child, is reported in writing for presentation to the IEP team. [CM III-B(C)(9)]		
(10) Evaluation procedures are completed in a timely manner. [CM III-B(C)(10)]		
(D) DELIVERY OF SERVICES PROCEDURES - (1) In interpreting evaluation data and in making delivery of services decisions, LEA: (a) draws upon information from a variety of sources, including but not limited to aptitude and achievement tests, teacher recommendations, parent information, physical condition, social, linguistic or cultural background and adaptive behavior; [300.533(a)(1); CM III-B(D)(1)(a)]		
(b) insures that information obtained from all of these sources is documented and carefully considered; [300.533(a)(2); CM III-B(D)(1)(b)]		
(c) insures that the delivery of services decision is made by a multidisciplinary group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the delivery of services options; [300.533(a)(3); CM III-B(D)(1)(c)]		
(d) insures that more than one source is used in interpreting evaluation data and in making delivery of services decisions; and [CM III-B(D)(1)(d)]		
(e) insures that the delivery of services decision is made in conformity with least restrictive environment requirements. [300.533(a)(4); CM III-B(D)(1)(e)]		
(2) If a determination is made that a child has disability and needs special education and related services, an IEP is developed for the child and implemented according to the provisions identified in the IEP. [300.533(b); CM III-B(D)(2)]		
(E) REEVALUATION - (1) LEA insures: (a) that each IEP for a child with a disability is reviewed at least annually; and [300.534(a); CM III-B(E)(1)(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(b) that an evaluation of the child is conducted every three years or more frequently if conditions warrant or if the child's parent(s) or teacher requests an evaluation. [300.534(b); CM III-B(E)(1)(b)]		
(2) A flexible approach to three-year reevaluations based on the unique needs of the child and the specific questions that need to be answered is assured. Reevaluations are meaningful, individualized, multifaceted and serve the best interests of children. [CM III-B(E)(2)]		
(3) The following factors are considered in conducting and in shaping the nature of reevaluations: (a) the purposes and specific questions for reevaluation guide the selection of evaluation methods; and [CM III-B(E)(3)(a)]		
(b) three broad purposes of reevaluation are: (i) evaluating the effectiveness of the child's IEP, [CM III-B(E)(3)(b)(i)]		
(ii) evaluating the appropriateness of the child's current interventions and determining his/her future needs, and [CM III-B(E)(3)(b)(ii)]		
(iii) determining whether the child continues to be in need of special education services. [CM III-B(E)(3)(b)(iii)]		
(4) Additional factors influence the choice of a specific evaluation procedure, including the child's age, severity and nature of disability, progress in school, years receiving special educational services, availability of data from many sources (e.g., school and home) and the consistency of the results of previous evaluations. [CM III-B(E)(4)]		
(5) Sources of information that are considered in an evaluation include, but are not limited to, review of records, interviews, observations, curriculum-based measures, rating scales, vocational assessments, medical assessments and psychoeducational tests. Some areas of evaluation may require procedures from several of these data sources. [CM III-B(E)(5)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(XV) **ADDITIONAL PROCEDURES FOR EVALUATING CHILDREN WITH A SPECIFIC LEARNING DISABILITY** - LEA publishes procedural safeguards addressing additional protection in evaluation procedures for evaluating children with a specific learning disability and which meet the requirements identified in the following section. [300.540; CM III-C]	Satisfied if XVA - XVD are met.	
(A) **ADDITIONAL TEAM MEMBERS** - In evaluating a child with a specific learning disability LEA includes on the multidisciplinary evaluation team: (1)(a) the child's regular teacher; or [300.540(a)(1); CM III-C(A)(1)(a)]		
(b) if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or [300.540(a)(2); CM III-C(A)(1)(b)]		
(c) for a child of less than school age, a person qualified by the NMSDE to teach a child of his or her age; and [300.540(a)(3); CM III-C(A)(1)(c)]		
(2) at least one person qualified to conduct child evaluations, such as a school psychologist, educational diagnostician, speech-language pathologist, classroom teacher, program specialist or remedial reading teacher. [300.540(b); CM III-C(A)(2)]		
(B) **CRITERIA FOR DETERMINING THE EXISTENCE OF A SPECIFIC LEARNING DISABILITY** - (1) A team determines that a child has a specific learning disability if: (a) the child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (b) below of this section, when provided with learning experiences appropriate for the child's age and ability levels; and [300.541(a)(1); CM III-C(B)(1)(a)]		
(b) the team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: [300.541(a)(2); CM III-C(B)(1)(b)]		
(i) oral expression; [300.541(a)(2)(i); CM III-C(B)(1)(b)(i)]		
(ii) listening comprehension; [300.541(a)(2)(ii); CM III-C(B)(1)(b)(ii)]		
(iii) written expression; [300.541(a)(2)(iii); CM III-C(B)(1)(b)(iii)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(iv) basic reading skill; [300.541(a)(2)(iv); CM III-C(B)(1)(b)(iv)]		
(v) reading comprehension; [300.541(a)(2)(v); CM III-C(B)(1)(b)(v)]		
(vi) mathematics calculation; or [300.541(a)(2)(vi); CM III-C(B)(1)(b)(vi)]		
(vii) reasoning. [300.541(a)(2)(vii); CM III-C(B)(1)(b)(vii)]		
(2) The team does not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of: (a) a visual, hearing, or motor disability; [300.541(b)(1); CM III-C(B)(2)(a)]		
(b) intellectual disability; [300.541(b)(2); CM III-C(B)(2)(b)]		
(c) emotional disturbance; or [300.541(b)(3); CM III-C(B)(2)(c)]		
(d) environmental, cultural or economic factors. [300.541(b)(4); CM III-C(B)(2)(d)]		
(C) OBSERVATION - (1) At least one team member other than the child's regular teacher observes the child's academic performance in the regular classroom setting. [300.542(a); CM III-C(C)(1)]		
(2) In the case of a child out of school, a team member observes the child in an environment appropriate for a child of that age. [300.542(b); CM III-C(C)(2)]		
(D) WRITTEN REPORT - (1) The team prepares a written report of the results of the evaluation. [300.543(a); CM III-C(D)(1)]		
(2) The report includes a statement of: (a) whether the child has a specific learning disability; [300.543(b)(1); CM III-C(D)(2)(a)]		
(b) the basis for making the determination; [300.543(b)(2); CM III-C(D)(2)(b)]		
(c) the relevant behavior noted during the observation of the child; [300.543(b)(3); CM III-C(D)(2)(c)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(d) the relationship of that behavior to the child's academic functioning; [300.543(b)(4); CM III-C(D)(2)(d)]		
(e) the educationally relevant medical findings, if any; [300.543(b)(5); CM III-C(D)(2)(e)]		
(f) whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and [300.543(b)(6); CM III-C(D)(2)(f)]		
(g) the determination of the team concerning the effects of environmental, cultural or economic factors. [300.543(b)(7); CM III-C(D)(2)(g)]		
(3) Each team member certifies in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member submits a separate statement presenting his or her conclusion. [300.543(e); CM III-C(D)(3)]		
(XVI) USE OF IDEA FUNDS - LEA annually describes in its local IDEA application how it uses the funds under IDEA during the next school year. The application is filed annually with the NMSDE. [300.180; CM II(N)]		
(XVII) USE OF IDEA-B FUNDS ASSURANCES - (1) LEA assures it uses IDEA-B funds only for excess costs which are directly attributable to the education of children with disabilities; [300.229; CM II(O)(1)]		
(2) LEA assures it uses IDEA-B funds to supplement and, to the extent practicable, increase the level of state and local funds expended for the education of children with disabilities and in no case supplant state and local funds; and [300.230; CM II(O)(2)]		
(3) the LEA assures it does not use IDEA-B funds to provide services to children with disabilities unless LEA uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other children with disabilities in the LEA. LEA assures appropriate use of funds in its local IDEA application filed annually with the NMSDE. [300.231; CM II(O)(3)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(XVIII) DELIVERY OF SERVICES PROCEDURES - LEA insures that multiple criteria are used and considered in the delivery of services decisions of a child and that the delivery of services decision is made by a group of people in conformity with least restrictive environment regulations. [300.240; CM II(P)]		
(XIX) FREE APPROPRIATE PUBLIC EDUCATION - LEA makes a free appropriate public education available to all children with disabilities residing within its jurisdiction who need special education. (A) LEA insures that a free appropriate public education is available to all children with disabilities aged three (3) through twenty-one (21). [300.240; 300.301; CM II(Q); CM IV-A(A)]		
(B) If delivery of services in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, is at no cost to the parent(s) of the child. This requirement applies to placements which are made by LEA for educational purposes and includes placements in State supported educational programs. [300.302; CM IV-A(B)]		
(C) LEA insures that the hearing aids worn in school by children who are deaf and hard of hearing in school are functioning properly. [300.303; CM IV-A(C)]		
(D) LEA insures that children with disabilities have available to them the variety of educational programs and services available to children without disabilities within the jurisdiction of LEA, including, but not limited to, art, music, industrial arts, consumer and homemaking education and vocational education. The list of program options is not exhaustive and could include any program or activity in which children without disabilities participate. [300.305; CM IV-A(E)]		
Vocational education programs are specially designed, if necessary, to enable a child with a disability to benefit fully from those programs. [300.305; CM IV-A(E)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(E) (1) LEA takes steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities. [300.306(a); CM IV-A(F)(1)]		
(2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups, or clubs sponsored by LEA, referrals to agencies which provide assistance to persons with disabilities, and employment of children with disabilities, including both employment by LEA and assistance in making outside employment available. [300.306(b); CM IV-A(F)(2)]		
(F) Physical Education (1) Physical education services, specially designed if necessary, are made available to every child with a disability receiving a free appropriate public education. [300.307(a); CM IV-A(G)(1)]		
(2) Each child with a disability is afforded the opportunity to participate in the general physical education program available to children without disabilities unless: (a) the child is enrolled full time in a separate facility; or [300.307(b)(1); CM IV-A(G)(2)(a)]		
(b) the child needs specially designed physical education, as specified in the child's IEP. [300.307(b)(2); CM IV-A(G)(2)(b)]		
(3) If specially designed physical education is specified in a child's IEP, child is provided the services directly or arrangements are made for it to be provided through other public or private programs. [300.307(c); CM IV-A(G)(3)]		
(4) For a child with a disability who is enrolled in a separate facility, LEA insures that the child receives appropriate physical education services. [300.307(d); CM IV-A(G)(4)]		
(5) Special education includes instruction in physical education and is provided as an integral part of the educational program of every child with a disability. [CM IV-A(G)(5)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(G) Assistive Technology - (1) LEA ensures that assistive technology devices or assistive technology services, or both, are made available to any child with a disability who requires an assistive technology device or service in order to receive a free appropriate public education. [300.308; CM IV-A(H)(1)]		
(2) Assistive technology devices and assistive technology services for children with disabilities may be provided as special education, related services or, in the case of children with disabilities to be educated in regular classes, as supplementary aids and services. [300.308(a)(b)(c); CM IV-A(H)(2)]		
(XX) **PRIVATE SCHOOLS** LEA makes the following assurances annually in the local IDEA application for students not placed in or referred to private schools by LEA: (A) LEA provides students enrolled in private schools a genuine opportunity for equitable participation in a manner consistent with the number of private school students and their needs. [76.651(a)(1)(2); 76.653(a)]		
(B) LEA maintains continuing administrative direction and control over funds and property that benefit students enrolled in private schools. [76.651(a)(3)]		
(C) LEA consults with appropriate representatives of students enrolled in private schools during all phases of the development and design of the LEA Federal Special Education Project. [76.652(a)]		
(1) Which children receive benefits under the project. [76.652(a)(1)]		
(2) How the children's needs are identified. [76.652(a)(2)]		
(3) What benefits are provided. [76.652(a)(3)]		
(4) How the benefits are provided. [76.652(a)(4)]		
(5) How the project is evaluated. [76.652(a)(5)]		
LEA PRIVATE SCHOOL CONSULTATION PROCEDURES ARE SPECIFIED		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(D) LEA consults with appropriate representatives of students enrolled in private schools before LEA makes any decision that affects the opportunities of those students to participate in the project. [76.652(b)]		
(E) LEA gives the appropriate representatives of students enrolled in private schools a genuine opportunity to express their views regarding each matter subject to the consultation requirements. [76.652(c)]		
(F) LEA determines the following matters on a basis comparable to that used in providing for participation of public school students: (1) The needs of students enrolled in private schools. [76.653(a)]		
(2) The number of those students who participate in a project. [76.653(b)]		
(3) The benefits that LEA provides under the program to those students. [76.653(c)]		
(G) The program benefits that LEA provides for students enrolled in private schools are comparable in quality, opportunity for participation and scope to the program benefits that LEA provides for students enrolled in public schools. [76.654(a)]		
(H) If LEA uses funds under a program for public school students in particular attendance are or grade or age level, LEA ensures equitable opportunities for participation by students enrolled in private schools who: (1) have the same needs as the public school students to be served and [76.654(b)(1)]		
(2) are in that group, attendance area, age or grade level. [76.654(b)(2)]		
(I) If the average cost of meeting the needs of students in public and private schools is the same, LEA expends the same average amount of program funds for a student enrolled in a private school who receives benefits under the program as it does for a public school student who receives benefits under the program. [76.655(a)(1)(2)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(J) If the average cost of meeting the needs of students in public and private schools is different, LEA expends a different average amount commensurate with the difference in the average cost of meeting the needs of students in private schools who receive benefits under the program. [76.655(b)]		
(K) If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, LEA provides correspondingly different program benefits. [76.654(c)]		
(L) LEA provides the following information annually in its local IDEA application. (1) A description of how LEA meets the federal requirements for participation of students enrolled in private schools. [76.656(a)]		
(2) The number of students enrolled in private schools who have been identified as eligible to benefit under the program. [76.656(b)]		
(3) The number of students enrolled in private schools who receive benefits under the program. [76.656(c)]		
(4) The basis LEA uses to select the students. [76.656(d)]		
(5) The manner and extent to which LEA consults with appropriate representatives of students enrolled in public schools. [76.656(e)]		
(6) The places and times that the students receive benefits under the program. [76.656(f)]		
(7) The difference, if any, between the program benefits LEA provides to public and private school students and the reasons for the differences. [76.656(g)]		
(M) LEA does not use program/project funds for classes that are organized separately on the basis of school enrollment or religion of the students if: (1) the classes are at the same site and [76.657(a)]		
(2) the classes include students enrolled in public schools and students enrolled in private schools. [76.657(b)]		
(N) LEA does not use program funds to finance the existing level of instruction in private school or to otherwise benefit the private school. [76.658(a)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(O) LEA uses program funds to meet the specific needs of students enrolled in private schools rather than: [76.658(b)]		
(1) the needs of a private school and [76.658(b)(1)]		
(2) the general needs of the students enrolled in a private school. [76.658(b)(2)]		
(P) LEA uses program funds to make public personnel available in other than public facilities: [76.659]		
(1) to the extent necessary to provide equitable program benefits designed for students enrolled in private school and [76.659(a)]		
(2) if those benefits are not normally provided by the private school. [76.659(b)]		
(Q) LEA uses program funds to pay for the services of an employee of a private school only if: [76.660]		
(1) the employee performs the services outside of his or her regular hours of duty and [76.660(a)]		
(2) the employee performs the services under public supervision and control. [76.660(b)]		
(R) LEA maintains title to and administrative control of all equipment and supplies acquired with program funds. [76.661(a)]		
(1) LEA may place equipment and supplies in a private school. LEA ensures that the equipment or supplies placed in a private school: (a) are used only for the purposes of the project and [76.661(b)(c)(1)]		
(b) can be removed from the private school without remodeling the private school facilities. [76.661(c)(2)]		
(2) The LEA removes equipment or supplies from a private school if: (a) the equipment or supplies are no longer needed for the purposes of the project and [76.661(d)(1)]		
(b) removal is necessary to avoid use of the equipment or supplies for other than project purposes. [76.661(d)(2)]		
(S) LEA ensures that program funds are not used for the construction of private school facilities. [76.662]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(T) Children with disabilities in private schools placed or referred by LEA - (1) These assurances apply only to children with disabilities who are or have been placed in, or referred to, a private school by LEA as a means of providing special education and related services. (2) LEA insures that a child with a disability who is placed in or referred to a private school by LEA: (a) is provided special education and related services: (i) in conformance with an IEP; [300.401(a)(1); CM VI(A)(1)(2)(a)(i)]		
(ii) at no cost to the parent(s); and [300.401(a)(2); CM VI(A)(2)(a)(ii)]		
(iii) at a school which is accredited by the New Mexico State Board of Education and/or licensed by the New Mexico Department of Health; and [300.401(a)(3); CM VI(A)(2)(a)(iii)]		
(b) has all of the rights of a child with a disability who is served by LEA. [300.401(b); CM VI(A)(2)(a)(iii)]		
(3) (a) If a child with a disability has available a free appropriate public education and the parent(s) chooses to place the child in a private school, LEA is not required to pay for the child's education at the private school. However, LEA makes services available to the child. [300.403(a); CM VI(A)(3)(a)]		
(b) Disagreements between a parent(s) and LEA regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures. [300.403(b); CM VI(A)(3)(b)]		
(U) Children with disabilities in private schools not placed or referred by LEA - LEA provides special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of LEA. [300.452; CM VI(B)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(V) Children with disabilities referred to or placed in private schools by a public authority other than LEA - Educational decisions involving children with disabilities which utilize unilateral decision making which excludes LEA are inconsistent with procedural safeguards. Educational decisions made by public authorities, other than LEA, which do not include LEA in the decision making process are not the responsibility of LEA. The authority making such a decision becomes the public agency responsible for a free appropriate public education. [CM VI(C)]		
(XXI) STATE SUPPORTED EDUCATIONAL PROGRAMS (A) Children with disabilities in state supported educational programs placed or referred by LEA - (1) These assurances apply only to children with disabilities who are or have been placed in, or referred to, a state supported educational program by LEA as a means of providing special education and related services. (2) LEA insures that a child with a disability who is placed in or referred to a state supported educational program by LEA: (a) Is provided special education and related services: (i) in conformance with an IEP; [CM V(A)(1)(2)(a)(i)]		
(ii) at no cost to the parent(s); and [CM V(A)(2)(a)(ii)]		
(iii) at a school which is accredited by the New Mexico State Board of Education and/or licensed by the New Mexico Department of Health; and [CM V(A)(2)(a)(iii)]		
(b) has all the rights of a child with a disability who is served by LEA. [CM V(A)(2)(b)]		
(3) (a) When LEA determines that it is unable to meet the needs of the child as specified on the child's IEP, LEA may refer the child to a state supported educational program. [CM V(A)(3)(a)]		
(b) When LEA refers or places a child in a state supported educational program, LEA remains responsible for assuring the provision of a free appropriate public education to the child. [CM V(A)(3)(b)]		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ________________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(4) Responsibility for services for children placed in or referred to state supported educational programs are defined by an interagency agreement among LEA, the state supported educational program and the parent(s). [CM V(A)(4)]		
(5) On an annual basis, LEA, the state supported educational program and the parent(s) jointly review the child's IEP at a site specified in the interagency agreement. [CM V(A)(5)]		
(B) Children with disabilities referred to or placed in state supported educational programs by a public authority, other than LEA - Educational decisions involving children with disabilities which utilize unilateral decision making which excludes LEA are inconsistent with procedural safeguards. Educational decisions made by public authorities, other than LEA, which do not include LEA in the decision making process are not the responsibility of LEA. The authority making such a decision becomes the public agency responsible for a free appropriate public education. [CM V(B)]		
(XXII) **LEA ASSURES ANNUALLY IN THE LOCAL IDEA APPLICATION COMPLIANCE WITH THE FOLLOWING** - [CM II(R)(1)-(22) and (S)]	Satisfied if XXII(1) - XXII(22) are met.	
(1) Title VI of the Civil Rights Acts of 1964, as amended, 42 U.S.C. 20000d et. seq., which prohibits discrimination on the basis of disability race, color or national origin in programs and activities receiving federal financial assistance.		
(2) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance.		
(3) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 794, which prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance.		
(3) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et. seq., which prohibits discrimination on the basis of sex in educational programs and activities receiving federal financial assistance.		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(4) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et. seq., which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.		
(5) Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating on the basis of race, color, religion, sex, disability or national origin in hiring, promotion, and other employment policies.		
(6) Privacy Act of 1974 (PL 93-579) when applicable.		
(7) Record Retention: (a) LEA maintains United States Department of Education project records for five years after the completion of the activity for which the funds are used. However, if records are being used prior to the five year period due to any litigation, claim, audit or other actions, the records are retained until all issues have been resolved.		
(b) The retention period for the records of each fund period starts on the day the final expenditure reports are submitted to the United States Department of Education or the United States Department of Agriculture by the New Mexico State Department of Education. Also, if LEA uses United States Department of Agriculture records for the United States Department of Education programs, record retention for those records is five (5) years.		
(c) The records are made available to the state agency, federal government or its designees.		
(8) LEA shall repay to the New Mexico State Department of Education with nonfederal funds or from federal funds for which no accountability is required to the federal government, any amounts which the United States Department of Agriculture or the United States Department of Education orders the State of New Mexico to repay because of LEA's failure to comply with applicable statutes, regulations and requirements. LEA shall further repay to the New Mexico State Department of Education with nonfederal funds or from federal funds for which no accountability is required to the federal government any amounts determined by the New Mexico State Department of Education to have been misspent or misapplied because of the applicant's failure to comply with applicable statutes, regulations and requirements.		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(9) The Audit Act, Section 12-6-1, et. seq. NMSA, 1978. For inventory purposes, as it relates to federally funded programs, the lower amount of the state or federal requirement for the listing of chattels and equipment applies.		
(10) The State of New Mexico Procurement Code Section 13-1-28-, et. seq., NMSA, 1978 and further complies with any applicable federal purchasing requirements.		
(11) The New Mexico State Board of Education Audit Resolution Process. Regulation #88-8.		
(12) The Single Audit Act of 1984. (PL 98-502). If LEA receives $25,000 or more in Federal Financial Assistance, LEA has an audit made for such fiscal year in accordance with this Act. If LEA is not included under the Audit Act requirement, LEA submits a copy of the audit report directly to the New Mexico State Department of Education. Furthermore, LEA permits independent auditors to have access to records and financial statements as necessary to comply with the Act.		
(13) The Davis-Bacon Act (40 U.S.C. 276) when applicable.		
(14) The Hatch Act (5 U.S.C. 1501 et. seq.,) which limits the political activity of public employees involved in programs supported by federal funds.		
(15) The Presidential Executive Order 11246 which prohibits discrimination by government contractors on the basis of race, color, religion, sex, disability or national origin on construction contracts for $10,000 or more.		
(16) LEA assures that: (a) LEA administers each program covered by the application in accordance with all applicable statutes, regulations, program plans and applications.		
(b) The control of funds provided by the LEA under each program and title to property acquired with those funds is in the LEA and that the LEA administers those funds and property.		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(c) LEA uses fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for federal funds paid to the LEA under each program.		
(d) LEA: (i) Makes reports to the state agency or board and the secretary as may reasonably be necessary to enable the state agency or board and the secretary to perform their duties.		
(ii) Maintains records, including the records required under Section 437 of General Education Provision Act, and provides access to those records as the state agency or board or the secretary decides are necessary to perform their duties.		
(e) LEA provides reasonable opportunities for the participation by teachers, the parent(s) and other interested agencies, organizations, and children in the planning for and operation of each program.		
(f) Any application, evaluation, periodic program plan or report relating to each program is made readily available to the parent(s) and other members of the general public.		
(g) LEA in developing any project involving construction is: (i) Not inconsistent with overall State plans for the construction of school facilities.		
(ii) In developing plans consideration is given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under Section 794 of Title 29 in order to ensure that facilities constructed with the use of federal funds are accessible to and usable by children with disabilities.		
(h) LEA has adopted effective procedures for: (i) Acquiring and disseminating to teachers and administrators participating in each program, significant information from educational research, demonstrations and similar projects.		

EVALUATION CHECKLIST
AGENCY POLICIES, PROCEDURES AND ASSURANCES

AGENCY ______________________________

POLICY/PROCEDURE/ASSURANCE	SECTION/ PAGE #	COMMENTS
(ii) Adopting, if appropriate, promising educational practices developed through those projects. (i) LEA ensures: Funds expended under any applicable program are not used to acquire equipment (including computer software) in any instance in which acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.		
(17) 34 CFR Part 74-85 Education Department General Administration Regulation (EDGAR) and/or 7 CFR Part 3015 and 3016 Uniform Federal Assistance Regulations.		
(18) The General Education Provision Act, 20 U.S.C. 1221 et. seq.		
(19) The Family Educational Rights and Privacy Act of 1974 and any implementing regulations thereto.		
(20) The New Mexico State Department of Education assumes rights to all materials and/or products developed as a result of all federal and/or state funded projects.		
(21) LEA assures that it complies with the "New restrictions on lobbying" and has submitted the "Disclosure Form to report lobbying", as required.		
(22) Implementation of Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, and any implementing regulations thereto.		
(a) LEA certifies: (i) That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.		
(ii) That if it is unable to certify to any of the statements in this certification, LEA prepares an explanation.		
(22) LEA has filed a report with the NMSDE assuring compliance with each of these assurances.		

ADDITIONAL COMMENTS (IF ANY);

APPENDIX G

STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION
EDUCATION BUILDING
SANTA FE—87501-2786

ALAN D. MORGAN
SUPERINTENDENT OF PUBLIC INSTRUCTION

February 1, 1993

Dr. Patricia J. Guard, Acting Director
Office of Special Education Programs
State Data Reports
DPAP/PPIB
Switzer Building: Mail Stop 3512-2651
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2651

Dear Dr. Guard:

SUBJECT: NEW MEXICO DECEMBER 1, 1992 CHILD COUNT DATA REPORT

Enclosed please find a copy of the New Mexico December 1, 1992 Child Count Data Report. The data in this report was collected from eighty-eight local educational agencies and eight state supported schools.

Also included in the IDEA Part-B Count is a group of children with disabilities served by the New Mexico School for the Visually Handicapped which elected not to participate in the 89-313 count and related funding.

Should you have any questions, please contact Mr. Bill Trant, Assistant Director of Special Education, at (505) 827-6541 or at the SpecialNet address NEWMEXICOSE.

Sincerely,

ALAN D. MORGAN
State Superintendent
of Public Instruction

ADM:tp

Enclosure: New Mexico December 1, 1992 Child Count Data Report

cc: Dr. Jeanne Knight, Associate Superintendent for Learning Services
Dr. Linda Wilson, State Director of Special Education
Mr. Bill Trant, Assistant Director of Special Education
Ms. Judy Parks, Assistant Director of Special Education
Special Education Staff

"New Mexico Education: Good Schools Getting Better"

PART I

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PAGE 1 OF 5

OMB NO.: 1820-0543

FORM EXPIRES: 9/30/94

REPORT OF ELIGIBLE CHILDREN WITH DISABILITIES IN SCHOOLS OPERATED OR SUPPORTED BY STATE AGENCIES CHAPTER 1 OF ESEA (SOP)

December 1, 1992

REPORT IS TO BE CONDUCTED ON DECEMBER 1 AND IS DUE NO LATER THAN FEBRUARY 1

STATE: NEW MEXICO

SECTION A

COUNT DATE: MONTH 12 DAY 1 YEAR 92

SECTION B

NUMBER OF ELIGIBLE CHILDREN

AGE AS OF December 1, 1992	UNDER 1	1	2	3	4	5	Under 1-5 (TOTAL)
ALL DISABILITIES	4	19	24	25	11	20	103

ED Form: 820-16P

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART I

REPORT OF ELIGIBLE CHILDREN WITH DISABILITIES IN SCHOOLS
OPERATED OR SUPPORTED BY STATE AGENCIES
CHAPTER 1 OF ESEA (SOP)

OMB NO.: 1820-0543

FORM EXPIRES: 9/30/94

December 1, 1992

STATE: NEW MEXICO

Section B (continued)	NUMBER OF ELIGIBLE CHILDREN						
DISABILITY / AGE AS OF DECEMBER 1	6	7	8	9	10	11	6-11 (Total)
MENTAL RETARDATION							0
HEARING IMPAIRMENTS	8	3	5	5	5	6	32
SPEECH OR LANGUAGE IMPAIRMENTS							0
VISUAL IMPAIRMENTS							0
SERIOUS EMOTIONAL DISTURBANCE	3	4	1	8	5	10	31
ORTHOPEDIC IMPAIRMENTS							0
OTHER HEALTH IMPAIRMENTS							0
SPECIFIC LEARNING DISABILITIES							0
DEAF-BLINDNESS	0	0	1	1	2	0	4
MULTIPLE DISABILITIES	0	1	1	0	2	2	6
AUTISM							0
TRAUMATIC BRAIN INJURY							0
TOTAL (Sum of all of the above)	11	8	8	14	14	18	73

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U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART I

Page 3 of 5

REPORT OF ELIGIBLE CHILDREN WITH DISABILITIES IN SCHOOLS OPERATED OR SUPPORTED BY STATE AGENCIES CHAPTER 1 OF ESEA (SOP)

OMB NO.: 1820-0543

FORM EXPIRES: 9/30/94

December 1, 1992

STATE: NEW MEXICO

SECTION B (Continued)

DISABILITY / AGE AS OF DECEMBER 1	NUMBER OF ELIGIBLE CHILDREN 12	13	14	15	16	17	12-17 (Total)
MENTAL RETARDATION							0
HEARING IMPAIRMENTS	6	8	4	10	7	9	44
SPEECH OR LANGUAGE IMPAIRMENTS							0
VISUAL IMPAIRMENTS							0
SERIOUS EMOTIONAL DISTURBANCE	7	7	5	1	0	0	20
ORTHOPEDIC IMPAIRMENTS							0
OTHER HEALTH IMPAIRMENTS							0
SPECIFIC LEARNING DISABILITIES							0
DEAF-BLINDNESS	0	0	0	0	1	0	1
MULTIPLE DISABILITIES	5	3	1	3	0	3	15
AUTISM							0
TRAUMATIC BRAIN INJURY							0
TOTAL (Sum of all of the above)	18	18	10	14	8	12	80

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U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART I

REPORT OF ELIGIBLE CHILDREN WITH DISABILITIES IN SCHOOLS
OPERATED OR SUPPORTED BY STATE AGENCIES
CHAPTER 1 OF ESEA (SOP)

December 1, 1992

Page 4 of 5

OMB NO.: 1820-0543

FORM EXPIRES: 9/30/94

STATE: NEW MEXICO

SECTION B (Continued)	NUMBER OF ELIGIBLE CHILDREN						
DISABILITY — AGE AS OF DECEMBER 1	18	19	20	21	18-21 (Total)	6-21 (Total)	0-21 (Total)
MENTAL RETARDATION	1		1		2	2	***************
HEARING IMPAIRMENTS	12	7	2	0	21	97	***************
SPEECH OR LANGUAGE IMPAIRMENTS					0	0	***************
VISUAL IMPAIRMENTS					0	0	***************
SERIOUS EMOTIONAL DISTURBANCE						51	***************
ORTHOPEDIC IMPAIRMENTS						0	***************
OTHER HEALTH IMPAIRMENTS						0	***************
SPECIFIC LEARNING DISABILITIES						0	***************
DEAF-BLINDNESS	2	2	1	0	5	10	***************
MULTIPLE DISABILITIES	4	6	4	4	18	39	***************
AUTISM					0	0	***************
TRAUMATIC BRAIN INJURY					0	0	***************
TOTAL (Sum of all of the above)	19	15	8	4	46	199	302

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U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART I

REPORT OF ELIGIBLE CHILDREN WITH DISABILITIES IN SCHOOLS OPERATED
OR SUPPORTED BY STATE AGENCIES
CHAPTER 1 OF ESEA (SOP)

PAGE 5 OF 5

OMB NO.: 1820-0543

FORM EXPIRES: 9/30/94

December 1, 1992

REPORT IS TO BE CONDUCTED ON DECEMBER 1 AND IS DUE NO LATER THAN FEBRUARY 1

STATE: NEW MEXICO

SECTION C - CERTIFICATION

I CERTIFY THAT THE INFORMATION PROVIDED ON THIS FORM IS, TO THE BEST OF MY KNOWLEDGE, COMPLETE AND ACCURATE. A KNOWINGLY FALSE CLAIM ON THIS REPORT IS A CRIMINAL OFFENSE UNDER U.S. CODE, TITLE 18, SECTION 1001 OR SECTION 287.

SIGNATURE Alan Morgan	DATE SIGNED 2-1-93		
TYPED NAME AND TITLE	TELEPHONE AREA CODE	NUMBER	EXTENSION
ALAN D. MORGAN, State Superintendent of Public Instruction	(505)	827-6516	

ED Form: 820-16P

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART II

Page 1 of 5

OMB NO.: 1820-0043

FORM EXPIRES: 9/30/94

REPORT OF CHILDREN AND YOUTH WITH DISABILITIES RECEIVING SPECIAL EDUCATION PART B, INDIVIDUALS WITH DISABILITIES EDUCATION ACT

December 1, 1992

STATE: NEW MEXICO

SECTION A

COUNT DATE:	MONTH	12	DAY	1	YEAR	1992

SECTION B

NUMBER OF CHILDREN RECEIVING SPECIAL EDUCATION

AGE AS OF December 1, 1992	3	4	5	3-5 (Actual Data)
ALL DISABILITIES	737	1,162	1,168	3,067

ED FORM: 869-5

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART II

Page 2 of 5

OMB NO.: 1820-0043

FORM EXPIRES: 9/30/94

REPORT OF CHILDREN AND YOUTH WITH DISABILITIES RECEIVING SPECIAL EDUCATION
PART B, INDIVIDUALS WITH DISABILITIES EDUCATION ACT

December 1, 1992

STATE: NEW MEXICO

SECTION C

NUMBER OF CHILDREN AND YOUTH RECEIVING SPECIAL EDUCATION

DISABILITY / AGE AS OF DECEMBER 1	6	7	8	9	10	11	6-11 (Actual Data)
MENTAL RETARDATION	94	92	132	132	139	147	736
HEARING IMPAIRMENTS	29	30	36	26	25	24	170
SPEECH OR LANGUAGE IMPAIRMENTS	1,174	1,386	1,470	1,395	1,249	1,009	7,683
VISUAL IMPAIRMENTS	10	12	8	18	13	8	69
SERIOUS EMOTIONAL DISTURBANCE	59	137	199	258	366	360	1,379
ORTHOPEDIC IMPAIRMENTS	51	46	43	50	46	39	275
OTHER HEALTH IMPAIRMENTS	51	48	36	41	34	25	235
SPECIFIC LEARNING DISABILITIES	161	640	1,228	1,754	2,003	2,075	7,861
DEAF-BLINDNESS	0	0	0	0	0	0	0
MULTIPLE DISABILITIES	68	88	65	75	68	77	441
AUTISM	1	1	1	2	0	0	5
TRAUMATIC BRAIN INJURY	1	1	1	1	4	1	9
TOTAL (Sum of all of the above)	1,699	2,481	3,219	3,752	3,947	3,765	18,863

ED FORM: 869-5

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART II

Page 3 of 5

OMB NO.: 1820-0043

FORM EXPIRES: 9/30/94

REPORT OF CHILDREN AND YOUTH WITH DISABILITIES RECEIVING SPECIAL EDUCATION
PART B, INDIVIDUALS WITH DISABILITIES EDUCATION ACT

December 1, 1992

STATE: NEW MEXICO

SECTION C (continued) NUMBER OF CHILDREN AND YOUTH RECEIVING SPECIAL EDUCATION

DISABILITY / AGE AS OF DECEMBER 1	12	13	14	15	16	17	12-17 (Actual Data)
MENTAL RETARDATION	167	157	142	162	152	142	922
HEARING IMPAIRMENTS	31	30	22	22	23	24	152
SPEECH OR LANGUAGE IMPAIRMENTS	925	740	615	480	364	298	3,422
VISUAL IMPAIRMENTS	14	17	15	10	11	8	75
SERIOUS EMOTIONAL DISTURBANCE	397	346	408	361	274	193	1,979
ORTHOPEDIC IMPAIRMENTS	40	56	41	38	36	29	240
OTHER HEALTH IMPAIRMENTS	37	27	20	25	28	16	153
SPECIFIC LEARNING DISABILITIES	2,134	1,993	1,816	1,625	1,317	1,032	9,917
DEAF-BLINDNESS	0	0	0	1	0	0	1
MULTIPLE DISABILITIES	47	57	42	37	27	26	236
AUTISM	0	1	2	0	3	3	9
TRAUMATIC BRAIN INJURY	1	2	4	2	6	3	18
TOTAL (Sum of all of the above)	3,793	3,426	3,127	2,763	2,241	1,774	17,124

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U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

PART II

Page 4 of 5

OMB NO.: 1820-0043

FORM EXPIRES: 9/30/94

REPORT OF CHILDREN AND YOUTH WITH DISABILITIES RECEIVING SPECIAL EDUCATION PART B, INDIVIDUALS WITH DISABILITIES EDUCATION ACT

December 1, 1992

STATE: NEW MEXICO

SECTION C (continued) NUMBER OF CHILDREN AND YOUTH RECEIVING SPECIAL EDUCATION

DISABILITY / AGE AS OF DECEMBER 1	18	19	20	21	18-21 (Actual Data)	6-21 (Actual Data)	22+ (Optional)	6-22+ (Actual Data)
MENTAL RETARDATION	127	84	53	14	278	1,936	0	1,936
HEARING IMPAIRMENTS	11	4	2	0	17	339	0	339
SPEECH OR LANGUAGE IMPAIRMENTS	161	36	10	1	208	11,313	0	11,313
VISUAL IMPAIRMENTS	5	4	0	0	9	153	0	153
SERIOUS EMOTIONAL DISTURBANCE	116	26	11	0	153	3,511	1	3,512
ORTHOPEDIC IMPAIRMENTS	22	12	5	0	39	554	0	554
OTHER HEALTH IMPAIRMENTS	9	4	0	0	13	401	0	401
SPECIFIC LEARNING DISABILITIES	566	152	38	4	760	18,538	0	18,538
DEAF-BLINDNESS	0	0	0	0	0	1	0	1
MULTIPLE DISABILITIES	35	24	26	3	88	765	0	765
AUTISM	2	0	0	0	2	16	0	16
TRAUMATIC BRAIN INJURY	2	1	0	0	3	30	0	30
TOTAL (Sum of all of the above)	1,056	347	145	22	1,570	37,557	1	37,558

ED FORM: 869-5

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION
PROGRAMS

Page 5 of 5

PART II

OMB NO.: 1820-0043

REPORT OF CHILDREN AND YOUTH WITH DISABILITIES RECEIVING SPECIAL EDUCATION
PART B, INDIVIDUALS WITH DISABILITIES EDUCATION ACT

FORM EXPIRES: 9/30/94

December 1, 1992

REPORT DUE NO LATER THAN FEBRUARY 1

STATE: NEW MEXICO

SECTION D - CERTIFICATION

I CERTIFY that these data represent an accurate and unduplicated count of children and youth with disabilities receiving special education and related services on December 1, according to an Individual Education Program.

AUTHORIZING OFFICIAL

1. NAME AND TITLE	2. SIGNATURE	3. DATE OF SIGNATURE
ALAN D. MORGAN State Superintendent of Public Instruction		2/1/93

No further monies or other benefits may be paid out under this program unless this report is completed and filed as required by 20 U.S.C. 1411(a)(3); 1411a(5)(A)(ii); 1418(b); 1419.

ED FORM: B69-5

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APPENDIX H

NEW MEXICO STATE DEPARTMENT OF EDUCATION
PROCEDURES FOR TRACKING IMPARTIAL DUE PROCESS HEARING REQUEST
AND
ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW REQUEST

The New Mexico State Department of Education's (NMSDE) procedure for tracking each request for an impartial due process hearing and administrative review generally follows these specific sequences (Sections I and II). The NMSDE Special Education Unit (SEU) is responsible for coordinating the training of impartial due process hearing officers and administrative review officers. The SEU also serves as liaison/contact between the NMSDE and the hearing officers to facilitate the tracking and timely completion of the hearing and review processes.

SECTION I

Impartial Due Process Hearing Tracking Procedure

SEU INDIVIDUAL STAFF MEMBER ASSIGNED RESPONSIBILTY TO TRACK THIS HEARING PROCESS AND PROCEDURE: ______________________ ______________________
(name) (position)

SCHOOL YEAR: ______________________ CASE NUMBER ______________

1. DATE REQUEST RECEIVED BY STATE SUPERINTENDENT: ______________

2. NAME OF PARTY INITIATING REQUEST: ______________

   Request initiated on behalf of: ______________

   Address of party initiating request: ______________

   ____

3. PARTY AGAINST WHICH HEARING IS INITIATED: ______________

   Address of party: ______________

   Telephone number of party: ______________

Party contact person(s): ______________________________

4. REASON(S)/ISSUE(S) SPECIFIED IN HEARING REQUEST: ______________________________

____

____

5. DATE DECISION IS DUE (within 45 calendar days): ______________________________

6. DATE FINAL DECISION IS REACHED/MAILED TO PARTIES: ______________________________

7. DATE FINAL DECISION IS RECEIVED BY STATE SUPERINTENDENT: ______________________________

8. PREVAILING PARTY: ______________________________

(Non-prevailing party request an Administrative Appeal/Impartial Review?____no____yes. If yes, refer to Section II of this document)

9. NAME OF PARENT COUNSEL/REPRESENTATIVE: ______________________________

Address of parent counsel/representative: ______________________________

Telephone number of parent counsel/representative: ______________________________

10. MEDIATION (voluntary) CONFERENCE PROPOSED?:_____YES_____NO. If yes,

specify party(ies) who proposed conference: ______________________________

____

If yes, specify date(s) mediation conference proposed: ______________________________

____

11. MEDIATION CONFERENCE(S) HELD?_____YES_____NO. If yes, complete the following:

Date(s) of mediation conference(s): ______________________________

Individual(s) attending on behalf of parent/child: ______________________________

____

Individual(s) attending on behalf of agency involved______________________________

____

If mediation conference was scheduled but not held, why?______________________________

____

____

12. MEDIATION SUCCESSFUL?_____YES_____NO. If yes, how was the issue resolved?____

____

____

____

13. DATE STUDENT RECORDS WERE EXHCANGED BY THE PARTIES (within 10 calendar days of receipt of request for hearing):____________________

14. DATE STATE SUPERINTENDENT RANDOMLY SELECTED THREE NAMES OF IMPARTIAL DUE PROCESS HEARING OFFICERS AND FORWARDED THEIR NAMES TO THE PARTIES INVOLVED (within 15 days of receipt of request for hearing by the State Superintendent):____________________

Names/Addresses/Telephone Numbers of the three hearing officers randomly selected:

a) Name:____

Address:____

Telephone Number:________________________________

b) Name:____

Address:____

Telephone Number:________________________________

c) Name:____

Address:____

Telephone Number:________________________________

15. DATE PARTIES INVOLVED MUTUALLY SELECTED ONE OF THE THREE HEARING OFFICERS FORWARDED TO THEM BY STATE SUPERINTENDENT AND NOTIFIED STATE SUPERINTENDENT OF HEARING OFFICER SELECTED (within 5 calendar days of parties' receipt of the three names from State Superintendent):______

____

Name of Hearing Officer Selected:____________________________

Address:____

Telephone Number:________________________________

16. IF PARTIES WERE UNABLE TO REACH CONSENSUS ON THE SELECTION OF ONE OF THE THREE HEARING OFFICERS, NAME THE HEARING OFFICER APPOINTED BY STATE SUPERINTENDENT:

Name: ____

Address: ____

Telephone number: ______________________________________

17. DATE/TIME/PLACE/ADDRESS HEARING SCHEDULED BY HEARING OFFICER:

Date: ______________ Time: _____________ Place: ______________________

Address: ____

18. HEARING OPEN OR CLOSED? ______________________________________

19. 45 DAY TIME-EXTENSION REQUESTED? _____YES _____NO. If yes, specify below:

Party requesting extension: ______________________________

Reason(s) for requesting extension: ____________________________

____

____

Extension granted by hearing officer? _____yes _____no.
If extension was granted, document length of extension granted by hearing officer: ______________________________

Date/Time/Place/Address that hearing officer re-scheduled hearing:

Date: ______________ Time: ______________ Place: ______________________

Address: ____

20. HEARING OFFICER REQUESTS INDEPENDENT EDUCATIONAL EVALUATION? ____YES ____NO. If yes, specify below:

Date requested: ______________________________________

Reason(s) for request: ______________________________________

____

____

____

Qualified examiner(s)/agency conducting independent evaluation: ______

____

____

Date(s) evaluation(s) conducted: ______________________________

Date evaluation report submitted to hearing officer and parties

involved: ______________________________

21. CHILD REMAINS IN CURRENT PLACEMENT DURING HEARING PROCEDURE/PROCESS?

____YES____NO. If no, document reason(s) why______________________

____

____

____

22. DATE(S) ACTUAL IMPARTIAL DUE PROCESS HEARING HELD: ______________

23. DATE NMSDE SEU PROVIDED HEARING DECISION TO EHA-B ADVISORY PANEL: ____

____

ADDITIONAL RELEVANT COMMENTS BY SEU INDIVIDUAL ASSIGNED RESPONSIBILITY TO TRACK THIS HEARING PROCESS AND PROCEDURE: ______________________________

____

____

____

____

I certify the completion of this impartial due process hearing as outlined in Section I:

______________________________ ______________

Signature of NMSDE SEU Staff Member assigned to this case Date

SECTION II

Administrative Appeal - Impartial Review Tracking Procedure
ESNMS B.3.3

SEU INDIVIDUAL ASSIGNED RESPONSIBILITY TO TRACK THIS ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW REQUEST: ______________________________

(name) (position)

SCHOOL YEAR: ______________________ CASE NUMBER: ______________

1. DATE REQUEST RECEIVED BY STATE SUPERINTENDENT: ______________
   (must be within 30 calendar days from the date the impartial due process hearing decision was reached/mailed to the parties)

2. PARTY REQUESTING ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW: ______________

   Name: ______________

   Address: ______________

   Telephone Number: ______________

3. PARTY AGAINST WHICH ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW IS REQUESTED:

   Name: ______________

   Address: ______________

   Telephone Number: ______________

4. REASON(S)/ISSUE(S) SPECIFIED IN ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW REQUEST: ______________

5. DATE ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW DECISION DUE: ______________

6. DATE DECISION IS DUE (within 30 calendar days): ______________

7. DATE FINAL DECISION IS REACHED/MAILED TO PARTIES: ______________

8. DATE FINAL DECISION IS RECEIVED BY STATE SUPERINTENDENT: ______________

9. PREVAILING PARTY: ______________

10. DATE STATE SUPERINTENDENT APPOINTED ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW OFFICER: ______________

    Name: ______________

    Address: ______________

    Telephone Number: ______________

303 A

11. HEARING SCHEDULED AND HELD?____YES____NO. If yes, specify date/time/place/address of hearing AND AGAIN document tracking items 9, 20, 21 and 22 in Section I:

Date:______________Time______________Place:___________________________

Address:____

Hearing Open or Closed?____

12. EXTENSION OF TIME REQUESTED?____YES____NO. If yes, specify below:

Party requesting extension:____

Reason(s) for requesting extension:_____________________________________

____

____

Extension granted by Administrative Appeal - Impartial Review Officer?

____Yes____No. If extension was granted, document length of extension granted by hearing officer:_________________________________

If hearing is to be held, document Date/Time/Place/Address that administrative appeal-impartial review officer re-scheduled hearing:

Date:_____________Time:______________Place:____________________________

Address:____

13. CIVIL ACTION INITIATED?____YES____NO. If yes, specify below:

Date civil action initiated:____

Date NMSDE determined that civil decision was implemented:___________

Date NMSDE considers case closed:_______________________________________

14. DATE NMSDE SEU PROVIDED ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW AND/OR CIVIL DECISION TO EHA-B ADVISORY PANEL:________________________

ADDITIONAL RELEVANT COMMENTS BY SEU INDIVIDUAL ASSIGNED RESPONSIBILITY TO TRACK THIS ADMINISTRATIVE APPEAL - IMPARTIAL REVIEW REQUEST:______________

____

____

____

____

I certify the completion of this administrative appeal - impartial review process as outlined in Section II:

____ _______________

Signature of NMSDE SEU Staff Member assigned to this case Date

APPENDIX I

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW MEXICO STATE DEPARTMENT OF EDUCATION
AND
THE NEW MEXICO DEPARTMENT OF HEALTH
CONCERNING
THE TRANSITION OF CHILDREN FROM
THE FAMILY INFANT TODDLER PROGRAM
TO
SPECIAL EDUCATION AND RELATED SERVICES

This Memorandum of Understanding is made and entered into between the New Mexico State Department of Public Education, hereinafter referred to as the "SDE", and the New Mexico Department of Health, hereinafter referred to as the "DOH".

WHEREAS, the State of New Mexico participates in the Individuals with Disabilities Education Act, hereinafter referred to as the "Act";

WHEREAS, the SDE is responsible for the implementation of Part B under the Act and ensuring the provision of special education and related services to all eligible children from their third birthday;

WHEREAS, the DOH is the lead agency for the implementation of Part H under the Act and ensuring access to early intervention services for all eligible children from birth to the age of three years and their families;

WHEREAS, the federal regulations for Part B, "Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities" requires in section 300.154:

> "Each State plan [for Part B] must set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program [the Family Infant Toddler Program in New Mexico] under Part H of the Act who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age 3 an IEP, or, if consistent with sections 614(a)(5) and 677(d) of the Act, an individualized family service plan, has been developed and implemented by the child's third birthday."

WHEREAS, the federal regulations for Part H, "Early Intervention Program for Infants and Toddlers with Disabilities" requires in section 303.148:

> "Each application must include the policies and procedures used to ensure smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under Part B, including -
>
> (a) A description of how the families will be included in the transitional plans;
>
> (b) A description of how the lead agency under this part will -
>
> (1) Notify the appropriate local educational agency or intermediate educational unit in which the child resides; and
>
> (2) Convene, with the approval of the family, a conference between the lead agency, the family, and the local educational agency or unit at least 90 days before the child is eligible for the preschool program under Part B of the act in accordance with State law, to -
>
> (i) Review the child's program options for the period from the child's third birthday through the remainder of the school year; and
>
> (ii) Establish a transition plan; and
>
> (c) If the State educational agency, which is responsible for administering preschool programs under Part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination of transition matters."

WHEREAS, section 303.653 of the regulations to Part H of the Act requires that:

> "Each Council [established pursuant to section 303.600 of the regulations to Part H] shall advise and assist the State educational agency [SDE] regarding the transition of toddlers with disabilities to services provided under Part B of the Act, to the extent those services are appropriate."

NOW, THEREFORE, the SDE and the DOH, in consideration of the mutual covenants and agreement herein contained, do hereby agree as follows:

I. Purpose of Agreement

The purpose of this agreement shall be that:

A. The SDE and the DOH jointly exercise their respective duties and obligations under Parts B and H of the Act and establish a seamless system of transition between the two programs within the state of New Mexico.

B. Children and families participating in the Family Infant Toddler Program who are in need of special education and related services under Part B of the Act are provided a prompt and smooth transition into such services.

C. *Providers of* early intervention services and LEAs are assisted in exercising their duties and obligations under Parts B and H of the Act to assist families and children to move from the Family Infant Toddler Program to appropriate special education and related services in an uninterrupted manner.

III. Definitions

"DOH" means the New Mexico Department of Health.

"Family Infant Toddler Program" means the name of New Mexico's program of early intervention services provided pursuant to Part H of IDEA.

"IDEA" means the Individuals with Disabilities Education Act.

"LEA" means the local education agency.

"Preschool special education and related services" means services provided to three through five year olds pursuant to Part B of IDEA.

"SDE" means State Department of Education.

IV Terms of Agreement

The parties desire to assure that a smooth transition is accomplished for all children receiving Part H services and in need of Part B services on their third birthday; and therefore shall collaborate on the following activities:

A. The SDE shall provide a representative to the Family Infant Toddler Interagency Coordinating Council established by the Governor of New Mexico pursuant for sections 303.600 through section 303.670 of the regulations to Part H of the Act. A function of the Council is to advise and assist the SDE regarding the transition of children from the Family Infant toddler Program to services provided under Part B of the Act.

B. The DOH shall provide a representative to the SDE Advisory Panel (the IDEA Panel) of the State of New Mexico pursuant to sections 300.650 through 300.653 of the regulations to Part B of the Act.

C. Personnel from the SDE and the DOH shall work in collaboration to implement Part B and Part H of the Act. In particular -

   1. They shall assist LEAs and early intervention providers within the Family Infant Toddler Program to coordinate their communication with the families of eligible

children.

2. They shall encourage LEAs and early intervention providers to share information, with parental consent, about eligible children in order to make a transition smooth.

3. They shall work with LEAs, early intervention providers, and the Preschool Infant Evaluation program of the University of New Mexico to ensure prompt evaluations of children, so that there will be no break in services when a child turns three years of age.

D. The SDE and the DOH shall encourage the use of best practices regarding transition through the dissemination of relevant written materials to providers of early intervention services and preschool special education and related services.

E. The SDE and the DOH shall jointly provide technical assistance to providers of early intervention and special education and related services on best practices related to transition.

F. The SDE and the DOH, with the advice and assistance of the IDEA Advisory Panel and the Family Infant Toddler Interagency Coordinating Council, shall review the status of transition at least annually.

G. The DOH shall ensure that early intervention providers conduct transition planning activities as required by the regulations to Part H and New Mexico's Policies, Procedures and Guidelines for the Family Infant Toddler Program.

H. The SDE and the DOH shall enforce the confidentiality requirements of IDEA in relation to transition activities.

I. The SDE and the DOH shall work together to eliminate barriers to a smooth transition as they are identified.

V. Administering Agency

The SDE and the DOH shall jointly administer the Memorandum of Understanding and be responsible for annual review and ensuring that changes are made and executed as needed.

VI. Payment and Property

No payment or property will be exchanged between the SDE and the DOH as a result of this Memorandum of Agreement.

VII. Effective Date, Amendment, and Termination of Agreement

The Memorandum of Understanding shall be effective on October 1, 1993, or as soon thereafter as approved by the respective agency heads as signatory parties. Evaluation and review of this Memorandum of Understanding shall be accomplished annually by the SDE and the DOH. Recommended changes shall be executed in writing by both signatories. This Memorandum of Agreement shall be ongoing and shall not be terminated unless a signatory gives forty-five (45) days advance written notice to the other signatory of the intent to terminate the Memorandum of Understanding.

VIII. **Resolution of Disputes**

The parties will attempt to informally resolve disputes relative to the terms of this Agreement. Identified concerns which impede the ability to resolve disputes informally shall be handled as follows:

A. Discussions shall be held at the appropriate administrative level between agencies involved.

B. If resolution is not achieved at that level, the defined process for dispute resolution involving interagency agreements will be followed:

   1. Staff designated to coordinate activities set forth in this Agreement and/or signatories of this Agreement and/or designated appointees will attempt to mediate the dispute informally, or, if necessary, formally.

   2. Should attempts to mediate the dispute fail, legal counsel from the relevant agencies will attempt to resolve the dispute.

   3. Should there still be a lack of resolution, a petition will be made to the Governor's office to resolve the dispute. In so concurring, SDE acknowledges that DOH has been designated as the lead agency for the IDEA, Part H.

      Concurrence herein shall in no way be construed as diminishing or superseding the constitutional status and authority of the State Board of Education and the State Department of Public Education pursuant to the Constitution of the State of New Mexico.

IN WITNESS WHEREOF, the SDE and the DOH have caused this Agreement to be executed. Joint Powers Agreement between the State Department of Public Education and the Department of Health.

Alan D. Morgan 9-1-93

Alan D. Morgan
State Superintendent
of Public Instruction

Date

DEPARTMENT OF HEALTH

Michael J. Burkhart 8/20/93

Michael J. Burkhart, Secretary

Date

[illegible] M. [illegible], Assistant General Counsel
8/20/93

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION

KNL David Bloom 9-2-93

Kay Marr, Secretary

Date

APPENDIX J

Effective Date
July 1, 1989

GUIDELINES FOR THE PROFESSIONAL DEVELOPMENT PLAN (PDP)
Adopted By The State Board of Education On November 13, 1986

The following guidelines were developed by an advisory committee work group to relate the Professional Development Plan of the Teacher Performance Evaluation Plan to the Licensure System Framework adopted by the New Mexico State Board of Education on May 1, 1986.

Licensure Level I

All teachers holding new licenses will be immediately placed on a formal Professional Development Plan cycle which will relate their observed classroom teaching to the State Board of Education's adopted competencies and local school district's essential teaching competencies. The State Department of Education will notify the the teacher by letter that he/she must demonstrate satisfactory performance of the competencies adopted by the State Board of Education to qualify for movement to Licensure Level II. The Level I cycle will be for a maximum period of three years.

Licensure Level II

The Professional Development Plan cycle will include an indepth evaluation period at least once every three years. The teacher and the evaluator will collaboratively determine teacher goals. The teacher is encouraged to develop his/her own PDP with the approval of the administrator. However, re-licensure will be based only on those competencies adopted by the State Board of Education.

Licensure Level III A & B

The Professional Development Plan maximum cycle will be three years in length. Re-licensure will be based on continued successful performance on competencies adopted by the State Board of Education.

STATE DEPARTMENT OF EDUCATION
EDUCATOR PREPARATION AND LICENSURE UNIT
EDUCATION BUILDING
300 DON GASPAR
SANTA FE, NM 87503

SBE Regulation No. 86-4

Adopted by the State
Board of Education
June 27, 1986

LICENSURE IN SPECIAL EDUCATION, K-12

I. AUTHORITY: This regulation is adopted by the State Board of Education pursuant to Sections 22-2-1, 22-2-2, and 22-13-5, NMSA 1978. This regulation repeals State Board of Education Regulations 84-2, 77-11, 74-3, and 74-4 effective June 30, 1987. This regulation shall become effective on July 1, 1987.

II. APPLICABILITY: This regulation governs licensure in special education for those persons seeking such licensure on or after July 1, 1987.

III. REQUIREMENTS: Persons seeking licensure in special education pursuant to the provisions of this regulation shall meet the following requirements:

A. Bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

1. twelve (12) semester hours in English;
2. twelve (12) semester hours in history including American history and western civilization;
3. six (6) semester hours in mathematics;
4. six (6) semester hours in government, economics or sociology;
5. twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany; and
6. six (6) semester hours in fine arts; and

B. Credits from a regionally accredited college or university which include:

1. thirty (30) semester hours of professional education in a special education program approved by the State Board, including:

    a. completion of the State Board approved functional areas and related competencies; and

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Competencies for Special Education Teachers

I. Professional Knowledge

   A. Parent/Professional Communication Skills

      1. Discuss, demonstrate and apply communication techniques.
      2. Describe community resources available to parents.
      3. Describe issues and problems faced by parents of exceptional children.
      4. Describe models (e.g. home- and center-based) for service delivery.
      5. Demonstrate knowledge of and sensitivity to addressing cultural, social, and ethnic values and attitudes.

   B. Exceptionalities

      1. Define each exceptionality.
      2. List characteristics and needs.
      3. Discuss general nature, etiologies, and learning styles.
      4. Describe current theories and best practices for education and habilitation or rehabilitation.
      5. Demonstrate ability to respond to various physical and sensory needs of children with various exceptionalities.

   C. Least Restrictive Environment

      1. Describe rationale necessary to determining a child's least restrictive environment.
      2. Discuss the historical development of the least restrictive concept.
      3. Demonstrate knowledge of common service delivery options.
      4. Demonstrate skill in facilitating integration.

   D. Educational Appraisal and Review Committee

      1. Describe the role and responsibilities of the committee.
      2. Describe the ideal composition of the committee.
      3. Demonstrate skill in developing a total service plan.
      4. Demonstrate skill as a member of an Educational Appraisal and Review Committee in reviewing students Individual Educational Plans for consideration for exiting from Special Education.

Adopted by the SBE 10/2/86

II. Human Growth and Development

A. Motor, Language, Socio-emotional, and Cognitive Development

1. Describe the stages/milestones of normal motor, language, socio-emotional and cognitive development.
2. Demonstrate knowledge of the approximate age expectancies for achieving milestones.
3. List and discuss factors affecting development.
4. Discuss knowledge of social, cultural, and physiological aspects of human development.

B. Medical Syndromes

1. Describe medical syndromes commonly found among special populations and their impact on learning.
2. Describe identifying characteristics and prognosis.
3. Discuss causal factors.

III. Assessment/Evaluation

A. Screening, Referral, and Evaluation

1. Describe typical screening, referral and evaluation procedures for exceptional students.
2. Describe the types of assessment procedures, including informal and formal, standardized and non-standardized tests, norm-referenced and criterion referenced tests.
3. Take testing information from educational diagnostic evaluations and state specific adjustments needed for the student in methods and materials.
4. Demonstrate skill in observation techniques.
5. Demonstrate various methods for regular monitoring of student progress.
6. Take testing information from vocational assessments and incorporate the findings in the classroom programming.
7. Take assessment information from evaluation done by ancillary personnel and incorporate findings in classroom programming.

B. Individualized Educational Plan Development

1. Complete contents/and components of an Individualized Educational Plan.
2. Describe the timeline and procedures for Individualized Educational Plan development (Total Service Plan plus Instructional Component).
3. Develop annual goals and short term objectives for a student (Total Service Plan).

4. Design an Individualized Educational Plan (Instructional Component) for specific student.
5. Describe the procedures for modifying an (Individualized Educational Plan Total Service Plan).

C. Individualized Educational Plan Implementation (Instructional Component

1. Demonstrate ability to integrate the Total Service Plan and Instructional Component of the Individualized Educational Plan into daily classroom programming.

2. Use reading and math inventories to individualize instruction.

IV. Curriculum and Development

A. Curriculum and Development

1. Discuss and demonstrate knowledge of content and competencies of curricula appropriate to exceptional learners at the preschool, elementary and *secondary levels, including self-care, expressive and receptive language, cognitive and social-emotional, academic skill development, and vocational exploration and skill development.
2. Evaluate and select curricula based on the needs of students (age and disabilities) including theoretical foundations and approaches, developmental domains or content areas addressed, methods of evaluating students progress and type of service delivery models addressed.
3. Demonstrate skill in adapting existing curricula to the needs of exceptional populations to meet the intended content and competencies of instruction.

B. Instructional Strategies

1. Demonstrate knowledge of the diagnostic-prescriptive approach to instruction, including assessment, prescription, direct instruction, monitoring, and evaluation.

C. Materials

1. Select and match instructional materials to the learning needs and styles of individual students.
2. Evaluate commercial materials commonly used in special education programs.
3. Select appropriate materials for targeted curriculum classroom instruction.
4. Adapt commercial materials for use with specific populations.
5. Construct instructional materials to meet individual objectives.

*Refer to graduation requirements, course units and content and competencies specified in Educational Standards for New Mexico schools.

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D. Transition

1. Describe models for enabling exceptional learners to make transitions from Special Education to regular education, preschool to school, level to level, and school to work (life).
2. Assess readiness of a student for transition.
3. Discuss options for follow-up and evaluation of student progress in transition.
4. Demonstrate skill in the development of an Exit Plan.

V. Classroom Management

A. Behavior

1. Define and chart target behaviors.
2. Select and implement appropriate behavior management programs (e.g., understand and apply reinforcement, punishment, reinforcement schedules, token economies).
3. Demonstrate appropriate group and individual interventions.

B. Instruction

1. Describe various methods for individualizing instruction.
2. Describe methods for managing large group, small group, and individual instruction.

C. Environment

1. Demonstrate skill in establishing an appropriate physical environment.
2. Describe factors affecting motivation.
3. Discuss adaptations for different exceptionalities.

STATE DEPARTMENT OF EDUCATION
EDUCATOR PREPARATION AND LICENSURE UNIT
EDUCATION BUILDING
300 DON GASPAR
SANTA FE, NM 87503

SBE Regulation No. 87-5

Adopted by the State
Board of Education
January 19, 1987

LICENSURE IN EDUCATIONAL ADMINISTRATION, GRADES K-12

I. AUTHORITY: This regulation is adopted by the State Board of Education pursuant to Sections 22-2-1 and 22-2-2, NMSA. This regulation supersedes State Board of Education Regulations 76-1, 78-13, and 78-14. This regulation shall become effective on July 1, 1989.

II. APPLICABILITY: This regulation governs licensure in educational administration for those persons seeking such licensure on or after July 1, 1989.

III. REQUIREMENTS: Persons seeking licensure in educational administration pursuant to the provisions of this regulation shall meet the following requirements:

A. Bachelor's degree and master's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, an apprenticeship. The apprenticeship must:

1. be completed at a college or university with an educational administration program approved by the State Board of Education and consist of a minimum of 180 clock hours to include time at the beginning and end of the school year. A passing grade on the apprenticeship will verify completion of this requirement.
OR
2. be completed under the supervision of a local school superintendent or a private school official at the school and consist of a minimum of 180 clock hours to include time at the beginning and end of the school year. The local school superintendent will verify that the apprenticeship has met the State Board of Education's adopted competencies for educational administration. Such verification will be considered completion of this requirement.

B. A valid New Mexico teaching license. A Level I license will not meet this requirement.

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C. Eighteen semester hours of graduate credit in an educational administration program approved by the State Board of Education. The eighteen semester hour program must address the State Board of Education's approved functional areas and related competencies in educational administration. Colleges and universities may offer these hours through their educational administration, public administration, business administration, or other appropriate departments.

D. Passage of the Core Battery of the National Teacher Examination (NTE) and any appropriate specialty area.

IV. SAVING CLAUSE: All persons holding a valid New Mexico license in educational administration on June 30, 1989 shall be entitled to licensure in educational administration. Such licensure may be continued pursuant to regulation(s) as established by the State Board of Education.

I certify that this regulation was approved by the State Board of Education on January 19, 1987.

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Adopted by the State Board of Education
November 13, 1986

Effective date 1988 or 1989

ADMINISTRATOR COMPETENCIES

(To be included in a university's preparation program)

I. The administrator promotes an environment/climate conducive to productive performance. To do this, the administrator:

   A. Displays empathy toward persons with whom he/she comes into contact professionally;

   B. Promotes quality relationships among staff/students;

   C. Utilizes participatory management techniques;

   D. Respects and understands multi-cultural and ethnic societies;

   E. Practices a professional code of ethics (e.g., rules of confidentiality, legal guidelines for personnel);

   F. Establishes and maintains open lines of communication; and

   G. Responds positively to supervision.

II. The administrator plans for and manages the resources for which he/she is responsible, including personnel, finances, facilities, program, and time. To do this, the administrator:

   A. Implements district, state, and federal goals;

   B. Organizes tasks based on relevant objectives;

   C. Organizes, coordinates and supervises staff assignments and needs;

   D. Carries out appropriate fiscal procedures;

   E. Utilizes and maintains facilities;

   F. Demonstrates efficient time management by establishing schedules and reasonable timelines for completing tasks; and

   G. Utilizes available technology to meet administrative objectives.

III. The administrator communicates accurately and effectively. To do this, the administrator:

   A. Writes and speaks appropriately;

   B. Keeps staff and community informed of pertinent information;

   C. Utilizes appropriate listening skills; and

   D. Is receptive to the ideas of others.

IV. The administrator uses supervision, staff development, and performances evaluation to improve the program of the district. To do this, the administrator:

A. Implements a collaborative process in staff development;

B. Identifies and acknowledges effective performance in objective terms;

C. Assists individual professional development planning;

D. Develops, implements, and evaluates the staff development program, utilizing a variety of resources; and

E. Collects and uses adequate information before making supervisory decisions.

V. The administrator demonstrates leadership. To do this, the administrator:

A. Utilizes community demographics, educational standards, laws, and current educational research in planning and decision-making;

B. Makes firm but reasonable decisions and accepts responsibility for those decisions;

C. Develops measurable goals with input from the educational community;

D. Plans, develops, implements, and evaluates programs to achieve established goals;

E. Delegates responsibility and utilizes resources within the education community; and

F. Evaluates his/her own performance and implements a professional development plan.

VI. The administrator demonstrates an understanding of political theory. To do this, the administrator:

A. Utilizes skills in developing school-parent relations, coalition building, and related public services activities;

B. Understands the politics of school governance and operation;

C. Informs the public of relevant facts to aid them in reaching an informed judgment on tax, bond, and other referanda;

D. Exhibits skills in lobbying, negotiating, collective bargaining, policy development, and policy maintenance; and

E. Utilizes conflict resolution skills to cope with controversies.

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STATE DEPARTMENT OF EDUCATION
EDUCATOR PREPARATION AND LICENSURE UNIT
EDUCATION BUILDING
300 DON GASPAR
SANTA FE, NEW MEXICO 87503

SBE Regulation No. 88-4

Adopted by the State
Board of Education
January 19, 1988

LICENSURE IN AUDIOLOGY AND SPEECH LANGUAGE PATHOLOGY

Effective Date July 1, 1989

I. AUTHORITY: This regulation is adopted by the State Board of Education pursuant to Sections 22-2-1, and 22-2-2, NMSA 1978. This regulation supercedes State Board of Education Regulation 70-18. This regulation shall become effective on July 1, 1989.

II. APPLICABILITY: This regulation governs licensure in audiology or speech pathology for those persons seeking such licensure on or after July 1, 1989.

III. REQUIREMENTS: Persons seeking licensure in audiology or speech pathology pursuant to the provisions of this regulation shall meet the following requirements:

A. Bachelor's degree and Master's degree from a regionally accredited college or university.

B. 30 graduate hours (which may be completed as part of a Master's degree program or in addition to the Master's) meeting the applicable program requirements as follows:

1. The 30 graduate hours awarded by a New Mexico college or university must incorporate the New Mexico State Board of Education's approved competencies in the areas of audiology or speech pathology.

2. The 30 graduate hours awarded by a college or university outside New Mexico must be for an audiology or speech pathology/communication disordered program approved by the New Mexico State Board of Education.

COMPETENCIES FOR ENTRY LEVEL SPEECH LANGUAGE PATHOLOGISTS

Adopted by the State Board of Education January 19, 1988
Effective Date: July 1, 1989

I. ORGANIZE AND CONDUCT IDENTIFICATION PROGRAM

A. Demonstrate knowledge of techniques to screen and assess student's needs appropriate to age level in the area of speech and language development.

B. Coordinate schedules, rooms

C. Refer to agencies, teachers.

II. EVALUATE SPEECH AND LANGUAGE FUNCTIONS

A. Describe normal speech, language processes and their development including:

1. Language and speech development including semantics, syntax, morphology and phonology, fluency and voice.
2. Physiology, anatomy, and neurology of speech and language.
3. Social and cultural aspects of speech and language development.
4. Acoustics and psychoacoustics.
5. Speech and language production and perception.
6. Communicative processes:
   a. pragmatics
   b. pre-verbal
   c. verbal
   d. co-verbal

B. Evaluate speech and language delays and disorders including:

1. Select, administer and interpret appropriate tests of speech, language, hearing and cognition.
2. Listen discriminately to the individual's speech and language.
3. Transcribe speech and language samples accurately and completely.
4. Examine and evaluate oral peripheral structure and function.
5. Perceive and record other behavioral cues.
6. Gather pertinent information about the individual.
7. Differentiate bilingual bicultural patterns from language delays and disorders.
8. Request additional diagnostic assistance.
9. Analyze and interpret findings for use in diagnosis and recommendations.
10. Report results to concerned persons.

C. Hearing: skills to conduct and interpret otologic pure-tone screenings and impendance audiometry screening as needed.

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III. PLAN THE CLINICAL PROGRAM

A. Develop criteria for case load selection.

B. Select, design, and/or modify specialized approaches and curricula for the communicatively impaired.

C. Coordinate the schedule with the total program (i.e., ability to work closely with teachers to develop, identify, evaluate and modify educational materials, curricula, and teaching strategies appropriate to meet the educational needs for the communicatively impaired).

D. Develop measurable goals based on the specific needs of the individual.

E. Demonstrate the ability to work with teachers to develop individual educational plans and evaluate student progress in speech and language development.

IV. IMPLEMENT THE CLINICAL PROGRAM

A. Use treatment and management procedures appropriate to habilitation, rehabilitation and instructional programs for person requiring speech and/or language services.

B. Provide a good speech model.

C. Plan suitable motivational techniques.

D. Guide the individual toward awareness of and responsibility for treatment goals.

E. Maintain a well-structured, productive clinical setting.

F. Select clinical procedures and appropriate materials.

G. Identify factors influencing the individual's behavior.

H. Modify planned procedures according to the client's responses.

I. Individualize therapy within a group and encourage group dynamics.

J. Conduct ongoing evaluation.

K. Promote reinforcement outside the clinical setting for carryover and/or follow-up.

L. Develop criteria for dismissal.

V. CLINICAL ADMINISTRATION AND PROFESSIONAL RELATIONSHIPS

COMPETENCIES FOR ENTRY LEVEL AUDIOLOGISTS

Adopted by the State Board of Education January 19, 1988
Effective Date: July 1, 1989

I. DEMONSTRATE A BASIC UNDERSTANDING OF NORMAL COMMUNICATION PROCESSES, INCLUDING THE:

A. Anatomic and physiologic bases for the normal development and use of speech, language, and hearing, such as anatomy, neurology, and physiology of speech, language, and hearing mechanisms;

B. Physical bases and processes of the production and perception of speech and hearing, such as (a) acoustics or physics of sound, (b) phonology, (c) physiologic and acoustic phonetics, (d) perceptual processes, and (e) psychoacoustics; and

C. Linguistic and psycho-linguistic variables related to normal development and use of speech, language and hearing such as (a) linguistics (historical, descriptive, socio-linguistics, urban language), (b) psychology of language, (c) psycho-linguistic, (d) language and speech acquisition, and (e) verbal learning or verbal behavior.

II. DEMONSTRATE A KNOWLEDGE OF:

A. Audiologic assessment including puretone and speech audiometry, behavioral audiometry, acoustic immittance tests, evaluation of tolerance and comfortable listening levels, binaural and monaural evaluations, dichotic listening tests and other psychoacoustics measures.

B. Auditory system pathology.

C. Personal and group amplification systems (and other sensory aids), evaluation (electroacoustic and behavioral), selection, fitting, and orientation in use.

D. Auditory language skill development and the influence of hearing impairment on this process.

E. Speech and voice perception by hearing impaired persons and the influence of amplification systems and room acoustics on this process.

F. Hearing conservation in children and adults.

G. Psychological, social and educational-vocational ramifications of hearing impairment.

H. Counseling information and techniques used with hearing impaired persons and their families in matters relating to management of

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psycho-social, educational-vocational communication, and economic problems associated with hearing impairment.

I. Conditions requiring a referral to other professionals.

J. Calibration techniques and how to insure routine maintenance and calibration of all audiological equipment.

K. Various communication methodologies.

III. DEMONSTRATE A KNOWLEDGE OF CLINICAL ADMINISTRATION AND PROFESSIONAL RELATIONSHIPS

A. Assess effectiveness of the diagnostic and clinical program in terms of referral procedures, screening, scheduling, methods, follow-ups, and dismissal.

B. Assess the adequacy of equipment: tape recorders, FM auditory training units, hearing aids, in terms of operation, maintenance, and calibration.

C. Re-define goals periodically and modify program services.

  1. Provide feedback regarding clinical program strengths and/or weaknesses.
  2. Suggest needed improvements and corrective measures: staff, equipment, physical facilities.

D. Respect confidentiality.

E. Record pertinent information related to the audiological impairment.

F. Record results and interpretations of tests administered.

G. Prepare clear, complete, concise reports suited to the intended reader: parents, teachers, physicians and other ancillary service providers.

H. Participate in staffings.

I. Participate on organizations and committees.

J. Within an inter-professional group (i.e., Educational Appraisal and Review or Screening Committee),

  1. Interpret needs and abilities of the Hearing Impaired student.
  2. Relate hearing programs to total educational or rehabilitation plans.
  3. Consult staff, and report in reference to specific individuals.
  4. Recognize limitations in existing services and make referrals to appropriate agencies.
  5. Provide services as a resource person through in-service training, demonstrations, instructional materials.

K. Initiate and maintain cooperation among community, state, and federal agencies.

L. Inform community members, groups, and agencies of:

  1. Scope of Audiology profession.
  2. Professional standards and ethical responsibilities.
  3. Present programs and services.
  4. Expansion of programs and services to meet future demands.

M. Ability to demonstrate to teachers and school administrators effective classroom management techniques useful for teaching students with hearing problems.

N. Ability to integrate current laws and regulations, current research findings in audiological disorders into the curriculum for students with hearing problems.

O. Ability to work closely with parents, teachers, aids, and significant others involved in the education of students with audiological disorders.

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STATE DEPARTMENT OF EDUCATION
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SBE Regulation No. 88-3

Adopted by the State
Board of Education
January 19, 1988

LICENSURE IN EDUCATIONAL DIAGNOSIS

Effective date July 1, 1989

I. AUTHORITY: This regulation is adopted by the State Board of Education pursuant to Sections 22-2-1, and 22-2-2, NMSA 1978. This regulation supercedes State Board of Education Regulation 76-25. This regulation shall become effective on July 1, 1989.

II. APPLICABILITY: This regulation governs licensure in educational diagnosis for those persons seeking such licensure on or after July 1, 1989.

III. REQUIREMENTS: Persons seeking licensure in educational diagnosis pursuant to the provisions of this regulation shall meet the following requirements:

A. Bachelor's degree and Master's degree from a regionally accredited college or university.

B. 30 graduate hours, (which may be completed as a part of the master's degree program or in addition to the master's) meeting the applicable program requirements as follows:

   1. The 30 graduate hours awarded by a New Mexico college or university must incorporate the New Mexico State Board of Education's approved competencies in the area of educational diagnosis and include an internship.

   2. The 30 graduate hours awarded by a college or university outside New Mexico must be for an educational diagnostic or school psychology program approved by the New Mexico Board of Education; AND

C. Background experience. The applicant must meet this requirement by:

1. Holding a valid New Mexico teaching license, counseling license, or a license in another ancillary area; OR

2. Demonstrating three (3) years of documented, verified satisfactory experience in one or a combination of the following areas:

   a. work in community-based programs serving developmentally disabled children/adults;
   b. mental health work related to educational diagnosis;
   c. clinical practice related to educational diagnosis;
   d. vocational evaluation;
   e. teaching.

IV. SAVING CLAUSE: All persons holding a valid New Mexico license in educational diagnosis on June 30, 1989 shall be entitled to licensure in educational diagnosis. Such licensure may be further continued pursuant to regulation(s) as established by the State Board of Education.

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COMPETENCIES FOR ENTRY-LEVEL EDUCATIONAL DIAGNOSTICIANS

Adopted by the State Board of Education January 19, 1988
Effective Date: July 1, 1989

I. PROFESSIONAL KNOWLEDGE:

A. Parent/Professional Communication Skills

1. Discuss, demonstrate and apply communication techniques.
2. Describe community resources available to parents.
3. Describe issues and problems faced by parents of exceptional children.
4. Describe models (e.g. home, mainstream, and center-based) for service delivery.
5. Demonstrate knowledge of and sensitivity to addressing cultural social, and ethnic values and attitudes.
6. Demonstrate ability to communicate assessment, evaluation results both verbally and in writing to parents and professionals.
7. Demonstrate ability to communicate state and federal regulations and due process rights to parents and professionals.

B. Exceptionalities

1. Define each exceptionality.
2. List characteristics and needs as differentiated from cultural and/or linguistic differences.
3. Discuss general nature, etiologies, and learning styles.
4. Describe current theories and best practices for education and habilitation or rehabilitation.
5. Demonstrate ability to respond to various physical and sensory needs of children with various exceptionalities.
6. Choose evaluation instruments and procedures appropriate for each exceptionality, age level, and/or cultural, linguistic factor(s).

C. Least Restrictive Environment

1. Describe rationale necessary to determine a child's least restrictive environment.
2. Discuss the historical development of the least restrictive concept.
3. Demonstrate knowledge of common service delivery options.
4. Demonstrate skill in making recommendations to facilitate integration into the regular program.
5. Demonstrate knowledge of need for ancillary service and service delivery of options.

D. Educational Appraisal and Review Committee:

1. Describe the role and responsibilities of the committee.
2. Describe the ideal composition of the committee.

3. Demonstrate skill in developing a total service plan.
4. Demonstrate skill as a member of an Educational Appraisal and Review Committee in reviewing students Individual Educational Plans for consideration for exiting from special education.
5. Demonstrate skill in preparing comprehensive report summaries keyed to the development of a Total Service Plan.

II. HUMAN GROWTH AND DEVELOPMENT

A. Motor, Language, Socio-Emotional, Cognitive Development:

1. Describe the steps/milestones of normal motor, language, socio-emotional and cognitive development.
2. Demonstrate knowledge of the approximate age expectancies for achieving milestones.
3. List and discuss factors affecting development.
4. Discuss knowledge of social, cultural, and physiological aspects of human development.
5. Describe current theories of learning and learning styles.

B. Medical Syndromes

1. Describe medical syndromes commonly found among special populations and their impact on learning.
2. Describe identifying characteristics and prognosis.
3. Discuss causal factors.

III. ASSESSMENT/EVALUATION

A. Screening, Referral, and Evaluation

1. Demonstrate skill in typical screening, referral and evaluation procedures for exceptional individuals.
2. Demonstrate skill in selecting and administering the types of assessment procedures, including informal and formal, standardized and non-standardized tests, norm-referenced and criterion referenced tests.
3. Prepare reports giving testing information from educational diagnostic evaluations and state specific adjustments needed for the student in methods and materials.
4. Demonstrate skill in observation techniques.
5. Demonstrate various methods for regular monitoring of student progress.
6. Take testing information from vocational assessments and incorporate the findings in comprehensive reports for classroom programming.
7. Take assessment information from evaluation done by ancillary personnel and incorporate findings in comprehensive reports for classroom programming.
8. Demonstrate knowledge and use of psychometric theory and descriptive statistics necessary to interpret psychoeducational tests.

B. Individualized Educational Plan Development:

1. Complete contents/and components of an Individualized Educational Plan.
2. Describe the timelines and procedures of Individualized Educational Plan development (Total Service Plan plus Instructional Component).
3. Recommend annual goals and short term objectives for a student's Total Service Plan.
4. Design an Individualized Educational Plan (Instructional Component) for specific student.
5. Describe the procedures for modifying an Individualized Educational Plan (Total Service Plan).

C. Individualized Educational Plan Implementation (Instructional Component):

1. Demonstrate ability to integrate the Total Service Plan and Instructional Component of the Individualized Educational Plan into daily classroom programming.
2. Select reading and math inventories to individualize instruction.

STATE DEPARTMENT OF EDUCATION
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SBE Regulation No. 87-13
Amendment No. 1

Adopted by the State
Board of Education
October 7, 1988

LICENSURE FOR ANCILLARY PERSONNEL NOT COVERED IN OTHER ANCILLARY REGULATIONS

I. AUTHORITY: This regulation is adopted by the State Board of Education pursuant to Sections 22-2-1, and 22-2-2, NMSA 1978. This regulation repeals State Board of Education Regulations 80-10 and 80-11. This regulation shall become effective on July 1, 1989.

II. APPLICABILITY: This regulation governs licensure in ancillary for those seeking such licensure on or after July 1, 1989.

III. REQUIREMENTS: Persons seeking licensure in ancillary pursuant to the provisions of this regulation shall present official transcripts to the Educator Preparation and Licensure Unit and shall present current license(s) from the appropriate governing bodies:

1. Interpreter for the Deaf: National Registry of Interpreters for the Deaf. (Licensing by the National Registry of Interpreters for the Deaf is a performance examination and transcripts may not be applicable in some cases.); OR
2. Orientation and Mobility Specialists: Association for Education and Rehabilitation of the Blind and Visually Impaired or American Association of Workers for the Blind; OR
3. Physical Therapist: New Mexico Physical Therapy Licensing Board; OR
4. Occupational Therapist: New Mexico Occupational Therapy Licensing Board; OR
5. Certified Occupational Therapy Assistant: New Mexico Occupational Therapy Licensing Board; OR
6. Psychologists: New Mexico Board of Psychologist Examiners.

IV. SAVING CLAUSE: All persons holding a valid New Mexico license in ancillary areas covered in this regulation on June 30, 1989 shall be entitled to licensure in the respective ancillary area. Such licensure may be further continued pursuant to regulation(s) as established by the State Board of Education.